Supreme Court of The United States

Jonathan Elliott,

Petitioner

v.

U.S.A,

Respondent

PETITION FOR WRIT OF CERTIORARI

Jonathan Elliott
11975 Texas Ave #302
Los Angeles, CA 90025

Petitioner, in Pro Per

To the Honorable Justices of the Supreme Court of the United States:

Petitioner, Jonathan Elliott, respectfully petitions for a writ of certiorari to review the judgment of the [Court of Appeals/District Court/State Supreme Court] in the series of seven consolidated cases arising from a competition for scheduling at Evolve Talent Agency. These cases present important and interrelated legal questions that merit the attention of this Court.

OPINIONS BELOW

The opinion(s) of the Court's below in these consolidated cases are as follows:

- Case 1 JONATHAN ELLIOTT vs. METLIFE ET AL

California Superior Court, Los Angeles County May 18, 2004 BC315711 Defamation (Slander/Libel) (General Jurisdiction) Dismissed – Other 08/25/2004

- Case 2 Elliott v. Church of Scientology

US District Court for the Southern District of Florida Apr 25, 2006 9:06cv80424 Antitrust Antitrust Litigation Closed 04/10/2007

- Case 3 Elliott v. Church of Scientology International et al

US District Court for the Southern District of Florida Jul 18, 2008 9:08cv80807 Prisoner - General no cause specified Closed 03/05/2009

- Case 4 Jonathan Elliott v. Church of Scientology
  US Court of Appeals for the Eleventh Circuit Mar 08, 2007 07-11027 Other: Antitrust Closed 03/06/2008

- Case 5 Jonathan Elliott v. Janssen Pharmaceuticals, Inc., et al

US Court of Appeals for the Ninth Circuit Feb 21, 2014 14-55283 4365: Personal Injury-Product Liability Terminated 1/28/2016

- Case 6 Jonathan Elliott V. Janssen Pharmaceuticals Inc Et Al

United States District Court, California Central Feb 04, 2013 2:13cv743 Product Liability Notice of Removal - Product Liability Closed 12/13/2013

- Case 7 Elliott v. State of New York

United States District Court, New York Eastern Oct 29, 2009 1:09cv5019 Other Statutory Actions Fed. Question Closed 11/20/2009

- Case 8 Jonathan Elliott V. Monsanto Company

US District Court for the Central District of California Jul 08, 2013 2:13cv4891 Antitrust Sherman-Clayton Act Closed

JURISDICTION

This Court has jurisdiction over this petition pursuant to [U.S. Constitution, 28 U.S.C. § 1254], as the cases arise from decisions of the [U.S. Court of Appeals for the [9th and 11th] Circuits, which have rendered final judgments in these cases.

Since the judgments in these cases were issued by courts of appeals, this Court has discretionary authority to grant certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The cases present issues involving [list the relevant constitutional or statutory provisions, such as the Due Process Clause. These provisions are implicated in the following issues raised across the seven cases.

The **Due Process Clause** refers to a provision in the U.S. Constitution that ensures fair treatment through the judicial system and government actions. It appears in two places in the Constitution:

1. **Fifth Amendment (Federal Government)**:
   "No person shall be… deprived of life, liberty, or property, without due process of law."
   This applies to actions taken by the federal government.

2. **Fourteenth Amendment (State Governments)**:
   "No state shall… deprive any person of life, liberty, or property, without due process of law."
   This extends the same protections to actions taken by state governments.

Key Points of the Due Process Clause:

1. **Fair Treatment**: It requires that the government follows fair procedures when it takes away a person's life, liberty, or property. This includes fair hearings, notice, and the opportunity to be heard.
2. **Substantive Due Process**: Beyond just procedures, it also protects certain fundamental rights from government interference. Courts have found that certain rights, like the right to privacy, fall under substantive due process protections.
3. **Procedural Due Process**: This focuses on the procedures the government must follow before it can deprive someone of life, liberty, or property. This includes the right to a fair trial, the right to an attorney, and other procedural safeguards.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari because the seven consolidated cases present overlapping and significant questions of law that have substantial implications for the continued success of the American labor force. These issues include:

STATEMENT OF THE CASE

Evolve Talent Agency and Jonathan Elliott would like to return to the work of getting people jobs**.**

CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that this Court grant the petition for a writ of certiorari to review the judgment in these seven related cases.

Prayer for Relief,

Plaintiff is demanding $50 million from the United States of America to help support and continue his work scheduling actors, models, directors in commercial, television and film jobs.

Sincerely,

Jonathan Elliott

FEE WAIVER MAY 18 2004

FILED
LOS ANGELES SUPERIOR COURT
MAY 18 2004
JOHN A. CLARKE, CLERK
BY C. L. COLEMAN, DEPUTY

Jonathan Elliott
1022 1/2 Orange Grove Ave.
Los Angeles, CA 90019
323-525-0804

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

JONATHAN ELLIOTT, IN PAUPERIS IN PRO PER
PLAINTIFF,

VS.

METLIFE, ROBERT BENMOSCHE, STEWART NAGLER, GERALD CLARK, C. ROBERT HENRIKSON, CATHERINE REIN, O'BRIEN/ROTTMAN TALENT CONSULTANTS, PATRICK O'BRIEN, JENNIFER FERRERO, DION ROTTMAN, ERIC ROTTMAN, WILSHIRE BUSINESS CENTER, LACASTING, BEAU BONNEAU, DON SPEZIALE AND DOES 1 THRU 1000

DEFENDANTS

Civil Action

File No. BC315711

Complaint for Declaratory Relief and Damages

Case assigned D-39
JUDGE
Victor H. Person

Plaintiff Alleges:

1. Plaintiff brings this action pursuant to California Civil Codes Sections 44, 45 and 3294. Furthermore, that a libel in violation of California Civil Code Section 44 and slander in violation of California Civil Code Section 46 were perpetrated against Plaintiff and that special damage as a proximate

result did occur. Plaintiff contends that usurpation of office occurred and that sanctions be brought forth pursuant to California Code of Civil Procedure Section 803. The Plaintiff also alleges that violations of the United States Consitution occurred pursuant to Ammendment 3 regarding "quartering of troops," that as a result of this continuous defamation and misconduct Plaintiff no longer enjoys the use of his home.

Cause of Action

Plaintiff alleges that defamation in violation of California Civil Code Section 44 took form in both written and oral communications that subsequently forced him out of business and that during the course of his work the public was asked to perceive Jonathan Elliott as unprofessional and that the company of O'Brien/Rottman was so quick to point out the negative aspects of Jonathan's character that over one thousand clients left the company in the course of two years. Upon the death of his father, the company LACASTING refused to allow Jonathan online and caused him to lose a full year of work. Their decision was made on or about May 20, 2003 and Plaintiff alleges that the time of this tort of negligence has been less than one year now. Plaintiff seeks punitive damages in accordance with California Civil Code Section 3294 for oppression, fraud and the wrongful death of Jack Elliott, Plaintiff's father.

Statement of Facts

In September of 1999 Jonathan Elliott under the name Evolve Talent Agency was admitted into the Screen Actor's Guild as a representative agency doing business at 3435 Wilshire Blvd, Los Angeles, CA 90048.

Previous to this and during the course of doing business as an employee O'Brien/Rottman Talent Consultants, Jonathan Elliott worked as an employee of Patrick O'Brien and Eric Rottman. Jonathan also worked along side of Dion Rottman and Jennifer Ferrero.

Jurisdiction

New York Metropolitan Insurance provided the Insurance to this company (O'Brien/Rottman Talent Consultants) and has engaged in commercial activity in the State of California. The case is filed in California pursuant to Section 411.10 of the California Code of Civil Procedure.

Venue

Los Angeles California was the location of the

wrongful death of Jack Elliott. The action is filed pursuant to California Cilvil Code of Procedure Section 395 "If the action is for injury to person or personal property or from the death of wrongful act or negligence, the superior court in either the county where the injury occurs or the injury causing death occurs or the county where the defendants, or some of them reside at the commencement of the action, is a proper court for the trial of the action.

Parties

Plaintiff is asking that all parties be held responsible in this case by rules of joinder pursuant to California Code of Civil Procedure Section 389 and that no practical matter impede the jurisdiction of the venue.

Conclusion

As a result of inappropriate remarks and allegations the Wilshire Business Center prompted a decision to remove Jonathan from office only months after he had suffered the untimely death of his father. **Plaintiff also alleges that inappropriate remarks made by the Defendants were a cause to the wrongful death.** False representation of material fact was made regarding Jonathan's father and this caused unbelievable grief.

Plaintiff's father worked over twenty years on the NARAS Grammy Awards and a two minute tribute to Jack Elliott was cancelled simply to accommodate the business designs of O'Brien/Rottman. The Henry Mancini Institute that Jack Elliott helped found was interceded by an "Outreach" program and Barbara Elliott, Jack's widow was forced from the Board of Directors of a Foundation her husband founded. Joanna Elliott, Jack's daughter was also removed as a fundraiser. Essentially the O'Brien / Rottman team sought to disparage Plaintiff's family in order to gain an upper hand in the business world.

Regarding inappropriate action. In two separate and known cases to the Plaintiff, specifically Jay Spence Photography vs. O'Brien/Rottman and Bill Cosby vs. O'Brien Rottman the litigants sustained either fatal injury to themselves or to family members. During the course of this litigation the Plaintiff asks that the Defendants be in the due course of police duty surveyed and their activities and whereabouts be accounted for. In the course of writing that last sentence Plaintiff received a family threat.

It is written [Deut. xxxi. 12]: "Assemble the people together, the men and the women and the children." It is right, the men came to learn, the women came to hear; for what purpose were the children brought? Only that those who brought them should be rewarded. And he rejoined: You have had a good pearl in your hand and you wanted to deprive me of it.

Chantz Powell was a client about ten years old. Although the Plaintiff secured him two great jobs the child was told that Jonathan was irresponsible, untrustworthy, a screwed up drug abuser and a potential hazard to children. This theme was reiterated consistently by Jennifer Ferrero who also accused Plaintiff of drug dealing and basically scared the casting community away from hiring Plaintiff's talent. Jennifer publicly pronounced that Evolve Talent Agency deserved bankruptcy. As a result of these allegations, Jonathan lost the lease of his office and the lease of his apartment during the period he was in mourning for his father. **His family was forced into such a condition of fear that the family has to move from their home of 32 years.** Jennifer also publicly pronounced that Plaintiff's company was a FBI case and in fact, the FBI called Plaintiff two days after Plaintiff's father had

deceased in order to provoke the investigation that one of Plaintiff's talents was working as a hooker.

In fact, Jonathan Elliott worked very hard during his three years as a commercial talent agent. The company of O'Brien/Rottman relentlessly attacked Plaintiff and his business. During the course of his first year in business, the entire Guild was put on strike. One client, Angela Hoover had her car keyed. Another client, Adam Weiner was called in the middle of the day and offered more work in the future in exchange for not doing a job with the company. Client Rachel Povolotsky, only eight years old, was harangued on her way to an audition and forced into tears. Client Timmy Summerfield was told that Plaintiff was a child molester. Tanya Sanchez was told over the phone by O'Brien/Rottman Talent Consultant employee Joe Stokes that Plaintiff was a "stalker." In fact Patrick O'Brien, Jennifer Ferrero and others continually enforced the idea in the community that Plaintiff was a potential sex offender and suggested that both clients and people Plaintiff had never even met before obtain the services of a lawyer. Ms. Sanchez committed suicide. Another client, Yamilet was in a mysterious car accident on her way to an audition that killed her driver. **Another client Derick Staton was shot in the head and survived.** The damage to Evolve Talent Agency and the "E" symbol is extensive. Two

separate articles were published in Backstage West of specifically defamatory nature. One article poured over Plaintiff's business during the strike and another falsely alleged Plaintiff had unpaid debts to clients. Please see attached "Exhibit A" a graph of the auditions and clearly see there is a loss of business.

Prayer for Relief

Plaintiff believes these people created a hostile work environment, acted maliciously, negligently and in fraud. Plaintiff alleges that the libel and slander was the cause of bankruptcy and wrongful death. Also there is the damage of usurpation of property.
Moreover, Plaintiff has not made a dime in one year and feels the Court and it's judgement are Plaintiff's only course of action and there are serious causes that merit consideration here. Also, Plaintiff has suffered so much continuous emotional trauma through the last seven years of this drama Plaintiff requests that any cross-complaint or request for summary judgement be cause enough to incarcerate Defendant's and their attorneys for the nature of their continually malicious behavior. Plaintiff requests the

court order a **Motion to Prohibit Filing of New Litigation** pursuant to California Code of Civil Procedure Section 391.7 in order to prevent any further vexatious litigation.

Plaintiff is asking the court demand the sanction of $60,000,000.00 in declaratory relief from New York Metropolitan Life because they held the policy with O'Brien/Rottman and are the only plausible source of redress in this case.

Dated: May 18, 2004

By:

JONATHAN ELLIOTT

In pauperis in pro per

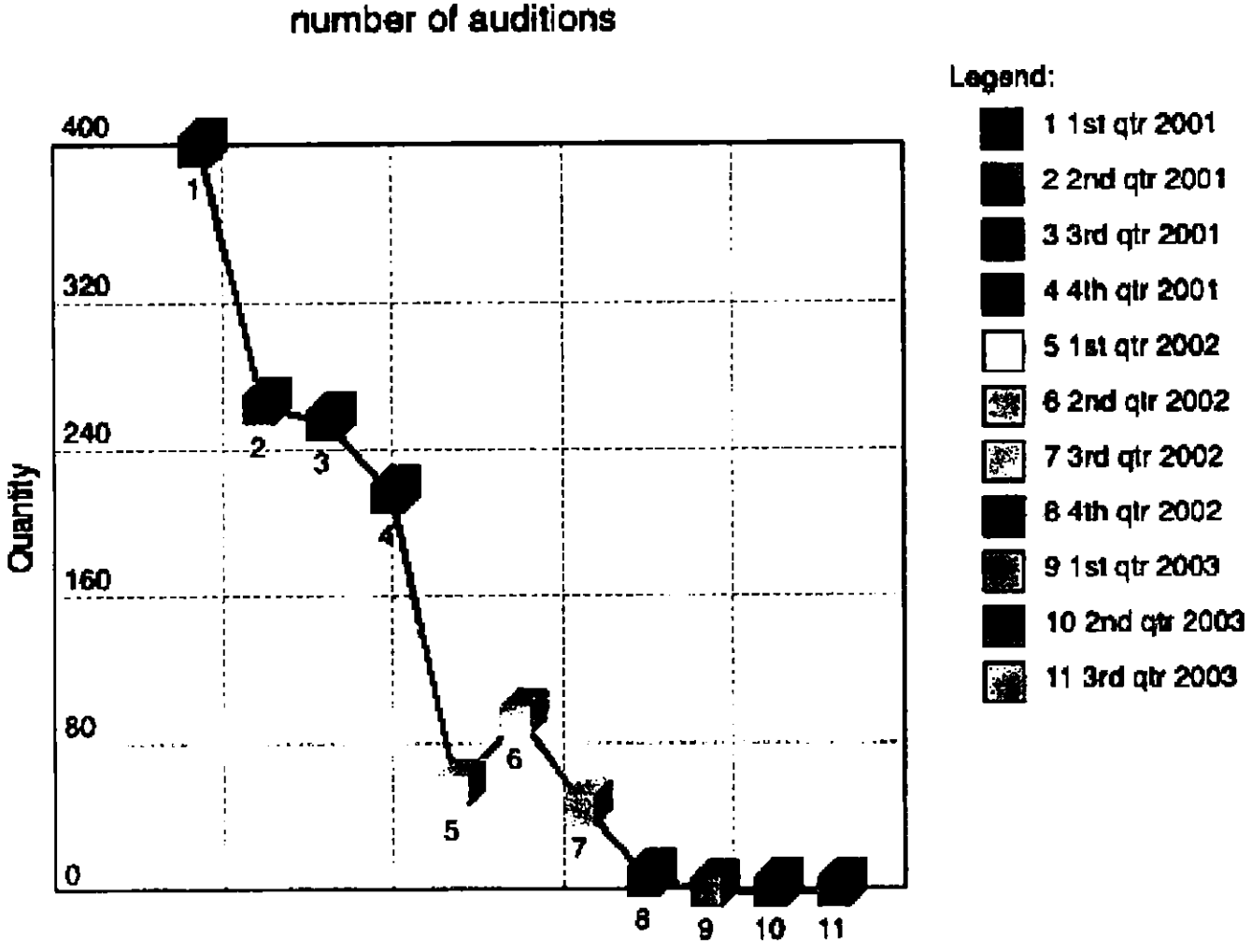
number of auditions
Legend:
1 1st qtr 2001
2 2nd qtr 2001
3 3rd qtr 2001
4 4th qtr 2001
5 1st qtr 2002
6 2nd qtr 2002
7 3rd qtr 2002
8 4th qtr 2002
9 1st qtr 2003
10 2nd qtr 2003
11 3rd qtr 2003
Quantity
400
320
240
160
80
0
1
2
3
4
5
6
7
8
9
10
11

Exhibit "A"

982.2(b)(1)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*:

JONATHAN ELLIOTT
1022 1/2 orange Grove Dr.
Los Angeles, CA 90019

TELEPHONE NO.: 323-525-0807 FAX NO.:
ATTORNEY FOR *(Name)*:

FOR COURT USE ONLY

FILED
LOS ANGELES SUPERIOR COURT
MAY 18 2004
JOHN A. CLARKE, CLERK
C. L. Coleman
BY C. L. COLEMAN, DEPUTY

INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY:
Los Angeles Superior

CASE NAME:
JONATHAN ELLIOTT vs. MET

CIVIL CASE COVER SHEET
☐ **Limited** ☒ **Unlimited**

Complex Case Designation
☐ **Counter** ☐ **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)

CASE NUMBER: BC315711
ASSIGNED JUDGE:

Please complete all five (5) items below.

1. Check **one** box below for the case type that best describes this case:

Auto Tort
☐ Auto (22)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
☐ Business tort/unfair business practice (07)
☐ Civil rights *(e.g., discrimination, false arrest)* (08)
☒ Defamation *(e.g., slander, libel)* (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence *(e.g., legal malpractice)* (25)
☐ Other non-PI/PD/WD tort (35)

Employment
☐ Wrongful termination (36)
☐ Other employment (15)

Contract
☐ Breach of contract/warranty (06)
☐ Collections *(e.g., money owed, open book accounts)* (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property
☐ Eminent domain/inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property *(e.g., quiet title)* (26)

Unlawful Detainer
☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review
☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800–1812)
☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Claims involving mass tort (40)
☐ Securities litigation (28)
☐ Toxic tort/Environmental (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
☐ Enforcement of judgment *(e.g., sister state, foreign, out-of-county abstracts)* (20)

Miscellaneous Civil Complaint
☐ RICO (27)
☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
☐ Partnership and corporate governance (21)
☐ Other petition *(not specified above)* (43)

2. This case ☐ is ☒ is not complex under rule 1800 of the California Rules of Court. If case is complex, mark the factors requiring exceptional judicial management:
   a. ☐ Large number of separately represented parties
   b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☐ Substantial amount of documentary evidence
   d. ☐ Large number of witnesses
   e. ☐ Coordination and related actions pending in one or more courts in other counties, states or countries, or in a federal court
   f. ☐ Substantial post-disposition judicial disposition
3. Type of remedies sought *(check all that apply)*:
   a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action *(specify)*: (Five)
5. This case ☐ is ☒ is not a class action suit.

Date:

JONATHAN ELLIOTT
(TYPE OR PRINT NAME)

Jonathan Elliott
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 982.2.)
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet shall be used for statistical purposes only.

SHORT TITLE:	CASE NUMBER
Elliott vs. MET	BC315711

CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ■ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL ___ / ☐ HOURS/ ■ DAYS.

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

Step 2: Check **one** Superior Court type of action in Column **B** below which best describes the nature of this case.

Step 3: In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	☐ A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	☐ A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	☐ A6070 Asbestos Property Damage	2.
		☐ A7221 Asbestos - Personal Injury/Wrongful Death	2.
	Product Liability (24)	☐ A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	☐ A7210 Medical Malpractice - Physicians & Surgeons	1., 2., 4.
		☐ A7240 Other Professional Health Care Malpractice	1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	☐ A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.
		☐ A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.
		☐ A7270 Intentional Infliction of Emotional Distress	1., 2., 3.
		☐ A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	☐ A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	☐ A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	■ A6010 Defamation (slander/libel)	1., 2., (3)
	Fraud (16)	☐ A6013 Fraud (no contract)	1., 2., 3.
	Intellectual Property (19)	☐ A6016 Intellectual Property	2., 3.

SHORT TITLE:	CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Non-Personal Injury/Property Damage/ Wrongful Death Tort (Cont'd.)	Professional Negligence (25)	☐ A6017 Legal Malpractice	1., 2., 3.
		☐ A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3.
	Other (35)	☐ A6025 Other Non-Personal Injury/Property Damage tort	2.,3.
Employment	Wrongful Termination (36)	☐ A6037 Wrongful Termination	1., 2., 3.
	Other Employment (15)	☐ A6024 Other Employment Complaint Case	1., 2., 3.
		☐ A6109 Labor Commissioner Appeals	10.
Contract	Breach of Contract/ Warranty (06) (not insurance)	☐ A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction)	2., 5.
		☐ A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence)	2., 5.
		☐ A6019 Negligent Breach of Contract/Warranty (no fraud)	1., 2., 5.
		☐ A6028 Other Breach of Contract/Warranty (not fraud or negligence)	1., 2., 5.
	Collections (09)	☐ A6002 Collections Case-Seller Plaintiff	2., 5., 6.
		☐ A6012 Other Promissory Note/Collections Case	2., 5.
	Insurance Coverage (18)	☐ A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
	Other Contract (37)	☐ A6009 Contractual Fraud	1., 2., 3., 5.
		☐ A6031 Tortious Interference	1., 2., 3., 5.
		☐ A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 8.
Real Property	Eminent Domain/Inverse Condemnation (14)	☐ A7300 Eminent Domain/Condemnation Number of parcels_____	2.
	Wrongful Eviction (33)	☐ A6023 Wrongful Eviction Case	2., 6.
	Other Real Property (26)	☐ A6018 Mortgage Foreclosure	2., 6.
		☐ A6032 Quiet Title	2., 6.
		☐ A6060 Other Real Property(not eminent domain, landlord/tenant, foreclosure)	2., 6.
Unlawful Detainer	Unlawful Detainer-Commercial (31)	☐ A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer-Residential (32)	☐ A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
	Unlawful Detainer-Drugs (38)	☐ A6022 Unlawful Detainer-Drugs	2., 6.
Judicial Review	Asset Forfeiture (05)	☐ A6108 Asset Forfeiture Case	2., 6.
	Petition re Arbitration (11)	☐ A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE:	CASE NUMBER

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review (Cont'd.) Writ of Mandate (02)	☐ A6151 Writ - Administrative Mandamus	2., 8.
	☐ A6152 Writ - Mandamus on Limited Court Case Matter	2.
	☐ A6153 Writ - Other Limited Court Case Review	2.
Other Judicial Review (39)	☐ A6150 Other Writ /Judicial Review	2., 8.
Provisionally Complex Litigation Antitrust/Trade Regulation (03)	☐ A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	☐ A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	☐ A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	☐ A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	☐ A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	☐ A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment Enforcement of Judgment (20)	☐ A6141 Sister State Judgment	2., 9.
	☐ A6160 Abstract of Judgment	2., 6.
	☐ A6107 Confession of Judgment (non-domestic relations)	2., 9.
	☐ A6140 Administrative Agency Award (not unpaid taxes)	2., 8.
	☐ A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.
	☐ A6112 Other Enforcement of Judgment Case	2., 8., 9.
Miscellaneous Civil Complaints RICO (27)	☐ A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	☐ A6030 Declaratory Relief Only	1., 2., 8.
	☐ A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
	☐ A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
	☐ A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
Miscellaneous Civil Petitions Partnership Corporation Governance(21)	☐ A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	☐ A6121 Civil Harassment	2., 3., 9.
	☐ A6123 Workplace Harassment	2., 3., 9.
	☐ A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
	☐ A6190 Election Contest	2.
	☐ A6110 Petition for Change of Name	2., 7.
	☐ A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
	☐ A6100 Other Civil Petition	2., 9.

SHORT TITLE:	CASE NUMBER
Elliott vs. MET	

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE ☐1.☐2.☒3.☐4.☐5.☐6.☐7.☐8.☐9.☐10.			ADDRESS: 3435 Wilshire Blvd. Los Angeles
CITY: Los Angeles	STATE: CA	ZIP CODE: 90048	

Item IV. *Declaration of Assignment*: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Los Angeles courthouse in the _____ District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: 5/18/07

_____
(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form JC 982.2(b)(1).
4. Complete Addendum to Civil Case Cover Sheet form CIV 109 _____ (eff. Date).
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form 982(a)(27), if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION
Case Co. 06-80424

Jonathan Elliott, formerly D.B.A ,
"Evolve Talent Agency",
Plaintiff,
vs.
Church of Scientology,
Defendant

CIV-MIDDLEBROOKS
MAGISTRATE JUDGE JOHNSON

COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Three-Judge District Court Requested

The Plaintiff, Jonathan Elliott, avers on knowledge as to himself and his own acts and on information and belief as to all other matters as follows:

NATURE OF THE ACTION

1. The Church of Scientology violated and continues to violate The Sherman Act and The Clayton Act. In accordance with Florida Evidence Statute Title VII Chapter 90.201 these matters must be judicially noticed. Evolve Talent Agency was damaged in the marketplace by the Church of Scientology discrimination in hiring procedures and restraint of trade. Evolve Talent Agency began as a sole

proprietorship in Los Angeles California in September of 1999 and was unable to afford the renewal of the insurance bond and California State Talent Agency license in May of 2004. Evolve Talent Agency ceased to engage in all commercial, television and film business enterprise at that time. Plaintiff is now a resident of Delray Beach, Florida.

JURISDICTION AND VENUE

2. The Plaintiff brings forth this complaint in accordance with Florida Statutes Title VI Chapter 47.011. The District court has proper original jurisdiction of this matter according to the Clayton Act 15 U.S.C 1 §25 - Restraining violations; procedure. "The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this Act,."

3. The District Court of Florida has jurisdiction in the matter in accordance with 15 U.S.C. 1 § 4 Jurisdiction of courts; duty of United States attorneys; procedure. "The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title;."

4. The complaint falls within the time specifications delineated in 15b U.S.C. § 4b. "The Clayton Act", Limitation of actions: "Any action to enforce any cause of action under section 15, 15a, or 15c of this title shall be forever barred unless commenced within four years after the cause of action accrued. No cause of

action barred under existing law on the effective date of this Act shall be revived by this Act."

THE PLAINTIFF

5. The Plaintiff is a resident of Palm Beach County residing at 321 S.W. 8th St., Delray Beach, Florida 33444. This would make the United States District Court Southern District of Florida the most convenient forum.

THE DEFENDANT

6. The Defendant, Church of Scientology, can be found at 1966 S. Congress Ave, West Palm Beach, Florida 33407. The Church holds property and offices worldwide. The Church of Scientology is present in the Southern Florida District and engages in weekly seminars and services within the District.

COURSE OF CONDUCT

7. While the Church of Scientology has made strident efforts to penetrate the Entertainment Industry by targeting celebrities for recruitment in their organization in an effort to gain their endorsement to further develop and grow their organization, the Church of Scientology has at the same time effectuated a practice of discriminating against groups not aligned to their organization. The natural progression of this economic and numerical growth alongside their declared

restrictions has created a classic monopoly situation in the fields of entertainment and entertainment related industry.

CLAIMS FOR RELIEF

CLAIM 1

The Church of Scientology has combined its membership and ordered them to restrict and restrain trade in the Entertainment industries of commercials, television and film. This is in violation of 15 U.S.C. § 1.

8. The relevant geographic market is the world.

9. Church of Scientology has the power to exclude competition.

10. There is no legitimate justification for the Church of Scientology conduct.

11. Evolve Talent Agency has suffered and will continue to suffer injury to its business and property.

CLAIM 2

Willful Maintenance of a Monopoly

In Violation of Sherman Act, Section 2

12. Church of Scientology conduct has caused and will continue to cause injury to the relevant market in the form of reduced competition and consumer choice.

13. Church of Scientology hiring ethics and its secret and discriminatory bestowal of special services and privileges, tend to diminish and destroy competition in the relevant entertainment market.

14. Church of Scientology has engaged in intentional wrongful conduct.

CLAIM 3

Willful violation of 13 U.S.C § 2 "The Clayton Act." Discrimination in price, services, or facilities Price; selection of customers.

15. Through unwarranted discrimination the Church of Scientology has diminished the integrity of businesses, destroyed competition and effectively prevented further competition. In so doing, the Church of Scientology has gained an effective monopoly of the hiring process in Hollywood.

16. Church of Scientology actions were independently wrongful as they violated federal and state law, were in restraint of trade, and were independently tortious.

17. Church of Scientology's intentional, wrongful conduct resulted in the actual disruption of Evolve Talent Agency relationships with third parties. As set forth above, Church of Scientology conduct caused these third parties (i) to cease purchasing Evolve Talent Agency talent, (ii) to limit the purchases from Evolve Talent Agency, (iii) to abstain from purchasing Evolve Talent Agency talent, (iv) to withdraw from participating in Evolve Talent Agency promotions.

18. Evolve Talent Agency has suffered economic harm proximately caused by Church of Scientology's conduct of discrimination in the marketplace.

19. Church of Scientology is not entitled to the "competition privilege" because Church of Scientology employed improper means and intended to create and/or continue an illegal restraint of trade.

20. Church of Scientology acted both oppressively and maliciously with intent to cause injury to Evolve Talent Agency and with conscious disregard for the rights of others. As such, Evolve Talent Agency is entitled to punitive and compensatory damages as permitted by law.

CLAIM 4

The Church of Scientology violates 14 U.S.C. § 3 "The Clayton Act". Sale, etc., on agreement not to use goods of competitor.

21. Through the solicitation and sales of their books, the Church of Scientology has explicitly forbidden the utilization of competitor's products and services.

22. The Church of Scientology has gained the understanding of their membership not to use other services.

23. The Church of Scientology has engaged in conduct with anticompetitive effects to unlawfully maintain and enhance its monopoly in the relevant market, to stifle competition and to eliminate consumer choice through unlawfully exclusionary behavior. The following excerpts from a Church of Scientology publication are of great probative value, it clearly directs its patrons to refuse the membership and hiring services of competition. This set the stage for monopoly.

"Suppressive Acts
11. Continued membership in a divergent group
14. Being at the hire of anti-Scientology groups or persons;"

[Hubbard, *Introduction to Scientology Ethics* (1967)]

24. The Church of Scientology engaged in illegal high pressure sales tactics. See "The Scientology Story" (Los Angeles Times series) by Joel Sappell and Robert W. Welkos, "Part 2: The Selling of a Church, Church Markets Its Gospel with High-Pressure Sales", (Monday, 25 June 1990, page A1:1). "Church members

are warned that unless they keep purchasing Scientology services, misery and sickness may befall them. For the true believer, this is a powerful incentive to keep buying whatever the group is selling. "See Id. "Hubbard said Scientology must be marketed through the "art of hard sell," meaning an "insistence that people buy." He said that, "regardless of who the person is or what he is, the motto is, 'Always sell something....' Hubbard contended that such high-pressure tactics are imperative because a person's spiritual well being is at stake. Among other things, he directed his followers to: "rob the person of every opportunity to say 'No.' "; "help prospects work through financial stops impeding a sale"; "make the prospect think it was his idea to make the purchase"; utilize the two man "tag team" approach, and "overcome and rapidly handle any attempted prospect backout." See Holland Furnace Co. v. ETC, 295 F.2d 302 (7th Cir. 1961); cf. Arthur Murray Studio, Inc. v. EW, 458 F.2d 622 (5th Cir. 1972) (emotional high-pressure sales tactics, using teams of salesmen who refused to let the customer leave the room until a contract was signed). See also "Statement of Basis and Purpose, Cooling-Off Period for Door-to-Door Sales", 37 Fed. Reg. 22934, 22937-38 (1972).

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FACTUAL BACKGROUND

25. In accordance with Florida Statute Title VII Chapter 90.401 the Plaintiff offers the Defendant's own public positions as relevant, substantial and competent evidence.

26. This Church of Scientology ethic is conclusively in strict violation of 14 U.S.C. §3, "The Clayton Act". It is also a violation of 13 U.S.C. §2 and restraint of trade as defined by 15 U.S.C. § 1. Moreover the policy of L. Ron Hubbard was and continues to be restrictive, prejudicial, unreasonable and pernicious, creating enmity in the community and fear among its members. Plaintiff believes it is in the public welfare to find these violations. See the findings of Congress in 15 U.S.C. Chapter 74 § 4801 **(2)** "the United States economy benefits when business, labor, government, academia, and public interest groups work together cooperatively"

27. See Business Electronics V. Sharp Electronics, 485 U.S. 717 (1988) held "The term 'restraint of trade' in the Sherman Act, like the term at common law before the statute was adopted, refers not to a particular list of agreements, but to a particular economic consequence, which may be produced by quite different sorts of agreements in varying times and circumstances."

28. See Eastman Kodak Co. V. Image Tech. Svcs. 504 U.S. 451 (1992) "Having found sufficient evidence of a tying arrangement, we consider the other necessary feature of an illegal tying arrangement appreciable economic power in the tying market. Market power is the power "to force a purchaser to do something that he would not do in a competitive market." Jefferson Parish, 466 U.S. at 14.9.

29. "The antitrust laws' primary purpose is to protect interbrand competition," see, e. g., Business Electronics Corp. v. Sharp Electronics Corp., 485 U.S. 717, 726." State Oil Co. v. Khan, 522 US 3 (1997) "Although most antitrust claims are analyzed under a "rule of reason," under which the court reviews a number of relevant factors, see, e. g., Arizona v. Maricopa County Medical Soc., 457 U.S. 332 , 342343, some types of restraints on trade have such predictable and pernicious anticompetitive effect, and such limited potential for procompetitive benefit, that they are deemed unlawful per se, see , e. g., Northern Pacific R. Co. v. United States , 356 U.S. 1 , 5" Business Electronics V. Sharp Electronics, 485 U.S. 717 (1988) "Section 1 of the Sherman Act provides that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." 15 U.S.C. 1. Since the earliest decisions of this Court interpreting this provision, we have recognized that it was intended to prohibit only unreasonable restraints of trade. National Collegiate Athletic Assn. v. Board of Regents of University of Oklahoma, 468 U.S. 85, 98 (1984); see, e. g., Standard Oil Co. v. United States, 221 U.S. 1, 60 (1911). Ordinarily, whether particular concerted action violates 1 of the Sherman Act is determined through case-by-case application of the so-called rule of reason - that is, "the factfinder weighs all of the

circumstances of a case in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition." Continental T. V., Inc. v. GTE Sylvania Inc., 433 U.S. 36, 49 (1977). "

SUMMARY

30. Plaintiff complains that his sole proprietorship, Evolve Talent Agency, was rendered defunct by the Church of Scientology as a natural progression of the Church's prejudicial ethics directing their membership away from people "divergent" of their organization. The Church gained a monopoly of trade in the entertainment field through various means. First, making a determined effort to recruit the celebrity marketplace in order to develop a growing number of members and second, by restricting and restraining trade in the entertainment field through their documented and heretofore mentioned policies (see Hubbard, Introduction to Scientology Ethics (1967)). The targeting of celebrity's to promote the Church of Scientology's interests and gain is clear.

31. More notes from the Church of Scientology appear online:

(1) "Celebrities are very Special people and have a very distinct line of dissemination. They have comm lines that others do not have and many medias to get their dissemination through."

From Flag Order 3323, 9 May 1973, published in Woroni (student newspaper of Australian National University) Vol. 49 #2, Thu 20 Mar 1997, p18.

(2) "one of the major purposes of the Celebrity Centre and its staff is to expand the number of celebrities in Scientology." (Scientology Flag Order 2310)

(3) "As far back as 1955, Hubbard recognized the value of famous people to his fledgling, off-beat church when he inaugurated "Project Celebrity." According to Hubbard, Scientologists should target prominent individuals as their "quarry" and bring them back like trophies for Scientology." Los Angeles Times, Joel Sappell and Robert W. Welkos,"Part 2: The Selling of a Church, The Courting of Celebrities Monday", 25 June 1990, page A18:5.

DEFINITIONS

32. "'Industrial sabotage' means malicious injury to work or to an industrial undertaking." AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION Workplace Relations Act 1996 s.45 appeal Chubb Security Australia Pty Ltd and John Thomas (C No. 23124 of 1999). This definition is submitted with consideration to Florida Statute Title VII Chapter 90.202 Section 4 "Matters which may be judicially noticed. A court may take judicial notice of the following matters, to the extent that they are not embraced within s. 90.201: (4) Laws of foreign nations and of an organization of nations."

33. A paper by Jon Atack, delivered at the Dialog Centre International conference in Berlin, October 1995 discusses the nature of this sabotage.

"On June 10, 1960, Hubbard issued a seemingly innocent Bulletin saying that not all scientologists need be professional 'auditors', or counselors. He encouraged his followers to bring Scientology to the society through their jobs. He praised those who had already exerted influence: 'These people ... drove a wedge for themselves into companies, societies, with Scientology and then took over control of the area.' On 23 June, Hubbard extended his design with the Special Zone Plan: 'a nation or state runs on the ability of its department heads, its governors, or any other leaders. It is easy to get posts in such areas ... Don't bother to get elected. Get a job on the secretarial staff or the bodyguard ... don't seek the co-operation of groups. Don't ask for permission."

34. The above report speaks to all generally conceived notions of corporate espionage, industrial sabotage and finally, international terrorism (also refer to the above "The Scientology Story", Sappell and Welkos) In U.S. v. Heldt et. al., the facts showed that church personnel had secreted a documentary evidence of crime, (688 F.2d at 1243 n.8), had committed illegal break-ins and theft (id. at 1244,1247,1248), had electronically bugged government offices (ibid), had lied to federal investigators and a grand jury (id. at 1246, 1247, 1248, 1249, 1253), had

suborned perjury (id. at 1247, 1253), had forcibly restrained, kidnapped, handcuffed and gagged a potential adverse witness (id. at 1244, 1273), and had formulated conspiracies to obstruct justice, steal government property, burglarize, bug, harbor fugitives from justice, and commit and suborn perjury before the grand jury (id. at n. 27 at 1258). In a memorandum urging stiff sentences for the Scientologists, federal prosecutors wrote:

"The crime committed by these defendants is of a breath and scope previously unheard of. No building, office, desk, or file was safe from their snooping and prying. No individual or organization was free from their despicable conspiratorial minds. The tools of their trade were miniature transmitters, lock picks, secret codes, forged credentials and any other device they found necessary to carry out their conspiratorial schemes. "

35. Notwithstanding, the Plaintiff asks the District Court of Florida to order landmark changes in the government's gracious acknowledgement of the Church of Scientology's status as a religious organization (in accordance with U.S.C Title 50, 1801 Definitions. §4). "As used in this subchapter: (a) 'Foreign power' means— (4) a group engaged in international terrorism or activities in preparation therefor;"

36. Defining a group of individuals "terrorists" is no small task. In fact, this is something Loren Hubbard himself did to Psychiatrists. See L. Ron Hubbard in "Freedom Scientology" early in 1969, "International Edition No. 1" "TODAY'S TERRORISM. While western countries are spending billions fighting terrorist activities abroad they are neglecting the one they have at home. The psychiatrist and his front groups operate straight out of the terrorist text- books. "

CONCLUSION

37. Plaintiff puts forth in this complaint that the Church of Scientology has been so enthusiastic about their plans to achieve expansion through celebrity endorsement that for all practical purposes, vis a vis the recruitment of membership throughout the gamut of Hollywood production (Scientology Flag Order 2310, Flag Order 3323, 9 May 1973), The Church of Scientology has combined and conspired to monopolize trade in the entertainment industry. What is more, the process of this conspiracy among Church of Scientology members is clearly documented in the Church of Scientology's own published works. While growing in popularity, the Church of Scientology has refused to honor the integrity of competitive products and services. What is more, The Church of Scientology has distributed by sales of literature and their free dissemination, the writings and

teachings of L. Ron Hubbard to Church of Scientology members and gained their understanding. Juxtapositioning U.S. Code with these writings it becomes apparent that these Church of Scientology ethics are both unreasonable and detrimental in free enterprise. Competition was diminished by Church of Scientology's restriction of trade and by marketplace discrimination. The Church of Scientology has gained a monopoly in the entertainment industry hiring process. As a defunct participant in the hiring process, Jonathan Elliott is entitled to relief in accordance with 15 U.S.C. § 1 , 15 U.S.C. § 2 and 15 U.S.C. § 26.

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JS 44 (Rev. 11/05)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS
Jonathan Elliott

DEFENDANTS
Church of Scientology

(b) County of Residence of First Listed Plaintiff West Palm Beach
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant West Palm Beach
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

CIV-MIDDLEBROOKS 06-80424

MAGISTRATE JUDGE JOHNSON

(d) Check County Where Action Arose: ☐ MIAMI- DADE ☐ MONROE ☐ BROWARD ☑ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff
☑ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

9:06 CV 80424-DMM-Johnson

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☑ 1	☑ 1	Incorporated or Principal Place of Business in This State	☐ 4	☑ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☑ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 610 Agriculture	☐ 422 Appeal 28 USC 158	☐ 400 State Reapportionment
☐ 120 Marine	☐ 310 Airplane	☐ 362 Personal Injury - Med. Malpractice	☐ 620 Other Food & Drug	☐ 423 Withdrawal 28 USC 157	☐ 410 Antitrust
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 365 Personal Injury - Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	☐ 430 Banks and Banking
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability	☐ 630 Liquor Laws	☐ 820 Copyrights	☐ 450 Commerce
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	☐ 640 R.R. & Truck	☐ 830 Patent	☐ 460 Deportation
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 650 Airline Regs.	☐ 840 Trademark	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 660 Occupational Safety/Health		☐ 480 Consumer Credit
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 690 Other	LABOR	☐ 490 Cable/Sat TV
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability		☐ 710 Fair Labor Standards Act	☐ 810 Selective Service
☐ 190 Other Contract	☐ 360 Other Personal Injury			☐ 720 Labor/Mgmt. Relations	☐ 850 Securities/Commodities/ Exchange
☐ 195 Contract Product Liability				☐ 730 Labor/Mgmt.Reporting & Disclosure Act	☐ 875 Customer Challenge 12 USC 3410
☐ 196 Franchise				☐ 740 Railway Labor Act	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		☐ 790 Other Labor Litigation	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 441 Voting	☐ 510 Motions to Vacate Sentence		☐ 791 Empl. Ret. Inc. Security Act	☐ 892 Economic Stabilization Act
☐ 220 Foreclosure	☐ 442 Employment	Habeas Corpus:		SOCIAL SECURITY	☐ 893 Environmental Matters
☐ 230 Rent Lease & Ejectment	☐ 443 Housing/ Accommodations	☐ 530 General		☐ 861 HIA (1395ff)	☐ 894 Energy Allocation Act
☐ 240 Torts to Land	☐ 444 Welfare	☐ 535 Death Penalty		☐ 862 Black Lung (923)	☐ 895 Freedom of Information Act
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 540 Mandamus & Other		☐ 863 DIWC/DIWW (405(g))	☐ 900Appeal of Fee Determination Under Equal Access to Justice
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	☐ 550 Civil Rights		☐ 864 SSID Title XVI	☐ 950 Constitutionality of State Statutes
	☐ 440 Other Civil Rights	☐ 555 Prison Condition		☐ 865 RSI (405(g))	
				FEDERAL TAX SUITS	
				☐ 870 Taxes (U.S. Plaintiff or Defendant)	
				☐ 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed- (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):
a) Re-filed Case ☐ YES ☑ NO JUDGE
b) Related Cases ☐ YES ☑ NO DOCKET NUMBER

VII. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
15 U.S.C 1 15 U.S.C. 2 13 U.S.C.2 14 U.S.C. 3 Cause: restraint of trade and monopoly

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND $ $4,500,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☑ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD Jonathan Elliott, in Proper DATE 4/25/06

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AMOUNT $PF RECEIPT # IFP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT COURT OF FLORIDA
JUDGE DONALD MIDDLEBROOKS

Jonathan Elliott, formerly D.B.A ,
"Evolve Talent Agency",

PLAINTIFF

vs.

08-80807-Civ-RYSKAMP/VITUNAC
FILE NO. _____

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; FLAG SERVICES ORGANIZATION INC., RELIGIOUS TECHNOLOGY CENTER, et al.

DEFENDANTS
_____ /

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS
(ex Corpus ex Opus ex Agens)

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. 2255 and is appropriate under Florida Statutes § 47.05.

THE WRIT OF HABEAS CORPUS IS AN APPROPRIATE REMEDY TO CHALLENGE THE CONTINUED EMPLOYMENT DISCRIMINATION

"The life of law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed, or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become." Oliver Wendell Holmes, The Common Law, 1991, Courier Dover Publications

The application of Habeas Corpus in this context is a challenge to fundamental principles of law; but it is not beyond the bounds of understanding or reason. Sir William Blackstone cites the first recorded usage of *habeas corpus ad subjiciendum* in 1305, during the reign of King Edward I. However, other writs were issued with the same effect as early as the reign of Henry II in the 12th century. Blackstone explained the basis of the writ, saying:

"The King is at all times entitled to have an account, why the liberty of any of his subjects is restrained, wherever that restraint may be inflicted."

Restraint has been inflicted upon the Petitioner's livelihood and discriminatory hiring practices have created excessive and burdensome challenges to the court. That these transgressions by the Defendant are of growing concern to the dedicated Judges who have tried to adjudicate American law is an obvious fact. In Wollersheim v. Church of Scientology (1989) 212 Cal.App.3d 872, 905-07 "...There is a compelling state interest in punishing and deterring this constitutionally unprotected, harmful conduct just as there is a compelling state interest in compensating the victims."

Scientology's relentless pursuit/acquisition of market power and private property is an issue now coursing through the work of American jurisprudence. A writ of habeas corpus will return "the body of work" to the agents and return Jonathan Elliott back to work in a fair and orderly marketplace.

Moreover, a trend of misappropriation is growing. See this Court's own ruling in Kelo v. City of New London, 545 U.S. 469 (2005). In dissenting Opinion, Clarence Thomas wrote "something has gone seriously awry with this Court's interpretation of the Constitution." Justice O'Connor argued that the decision eliminates "any distinction between private and

public use of property — and thereby effectively delete[s] the words 'for public use' from the Takings Clause of the Fifth Amendment." 125 S.Ct. 2655, 2671. The Supreme Court supports the sufficiency of factual allegations.

In Brown v. Vasquez, 952 F.2d 1164, 1166 (9th Cir. 1991), cert. denied, 112 S.Ct. 1778 (1992), the court observed that the Supreme Court has "recognized the fact that`[t]he writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.' Harris v. Nelson, 394 U.S. 286, 290-91 (1969). "

Habeas corpus ad subjiciendum, by way of eminence called the writ of habeas corpus, (q. v.) is a writ directed to the person detaining another, and commanding him to produce the body of the prisoner, with the day and cause of his caption and detention, ad faciendum, subjiciendum, et recipiendum, **to do, submit to, and receive, whatsoever the judge or court awarding such writ shall consider in that behalf**. 3 Bl. Com. 131; 3 Story, Const. _1333.

"The writ is to be granted whenever a person is in actual confinement, committed or detained as aforesaid, either for a criminal charge, or, as in Pennsylvania and New York, in all cases where he is confined or restrained

of his liberty, under any color or pretence whatsoever." 3 Yeats, R. 263; 1 Serge & Rowel, 356.

The judge or court before whom the prisoner is brought on a habeas corpus, examines the return and Papers (in this case, U.S. Southern Dist. Fl. 06-80424 & 11th Circuit Appeal # 07-11027-F) if any, referred to in it, and if no legal cause be shown for the imprisonment or restraint; or if it appear, although legally committed, he has not been prosecuted or tried within the periods required by law, or that, for any other cause, the imprisonment cannot be legally continued, the prisoner is discharged from custody. In the case of wives, children, and wards, all the court does, is to see that they ire under no illegal restraint." 1 Strange, 445; 2. Strange, 982; Wilmot's Opinions, 120.

The interdict De homine libero exhibendo of the Roman law, was a remedy very similar to the writ of habeas corpus. When a freeman was restrained by another, *contrary to good faith*, the praetor ordered that such person should be brought before him that he might be liberated. Dig. 43, 29, 1.

There is a method available to the Court to end their own agonizing frustration over these matters.

"We believe the prevailing or majority rule to be the better rule, because same is best calculated to assure the preservation of two of the most beneficial

characteristics of the great writ of habeas corpus, namely, (1) that the liberty of one unlawfully deprived thereof should be speedily restored to him, and (2) that such restoration should be final. To accomplish this beneficent result in the many cases in which the arrest and holding is unlawful, a rule of general application is required, even though in some cases a prisoner, denied discharge on habeas corpus, may desire, voluntarily, to forego the right to speedy determination, and may wish to appeal to a higher court." Ex parte Sullivan, No. 3514, Supreme Court of Nevada, 65 Nev. 128; 189 P.2d 338; 1948.

The writ is not absent of legal theory. If an *a forteriori* approach is utilized, then it is possible to reverse the trends of growing constitutional quandaries with a new way of looking at Habeas Corpus. *Corpus Juris* literally means "body of the law." So the law recognizes the Corpus in both its physical and spiritual element. The *Corpus Juris Secundum* is the authoritative American encyclopedia of law. This Petition for Habeas Corpus relates to the the "body of work of Agents" or *Corpus ex Opus ex Agens.* The specific duties and specific job assignments as well as Agent responsibilities are jeopardized by Scientology Policies and Agreements which limit and restrain the liberty of the Agents.

> "The nature and sufficiency of restraint to warrant intervention by habeas corpus proceedings is thus defined in 39 C.J.S., Habeas Corpus, § 9, pages 439, 440;
>
> 'An actual restraint is necessary to warrant interference by habeas corpus; but any restraint which precludes freedom of action is sufficient, and actual confinement in jail is unnecessary.'" Green v. Wiese, Cr. 272, Supreme Court of North Dakota, 78 N.W.2d 776; 1956

HABEAS CORPUS IS AN APPROPRIATE REMEDY

Applying Justices Thomas and O'Connor's dissent in Kelo to the "lawless state action" in Harris, Habeas Corpus becomes "the fundamental instrument for safeguarding individual freedom." (Harris)

The dismissal, equivalent to a Court sentence – permitted a lengthy and *de trop* three year confinement in custodial care to continue, establishing the Talent Agent as a *de facto* prisoner.

According to 28. U.S.C. §2255 a prisoner in custody under sentence of this Court may move "to vacate, set aside or correct the sentence."

> "If the proceedings were void in a legal sense, as when the forms of a trial are gone through in **a Court surrounded and invaded by an infuriated mob** ready to lynch prisoner, counsel and jury if there is not a prompt conviction, in such a case no doubt I might issue a habeas corpus- not because I was a judge of the United States, but simply as anyone having authority to issue the writ might do so, **on the ground that a proceeding was no warrant for the detention of the accused**." Opinion of Justice Oliver Wendell Holmes in the Case of Commonwealth v. Nicola Sacco & another, August 19, 1927.

Scientology has a history of false imprisonment charges.

"20. The staff members of the Florida Scientology organization subsequently drugged me (deposition pages 532-535) with the approval of Flag and senior officials of the "Church" of Scientology. Then they woke me up in the middle of the night (deposition page 511), took me in a recreational vehicle against my will (deposition pages 529 and 540) and subsequently held me in the rv and then in a room in Florida (deposition page 510) for a period totalling about four weeks, all against my will. I made at least two attempts to escape but I was bodily forced by the guards to return." Declaration of Roxanne Friend, *Roxanne Friend v. Church of Scientology International, et al*. Cal. Sup. 1999.

"I was, until earlier this year, one of Scientology's "celebrities". I am a professional artist…In June of 1996 I was held against my will in the Scientology, Clearwater, Florida facility and "ordered" to pay $7,400 before they would let me out of the room. I did not want to pay for what the two staff members insisted I must have, and what ensued was a verbal battle, emotional trauma and an attempt at financial extortion. After a time I managed to escape the physical detention, but two "Sea Org" members chased me right out into the streets of Clearwater to try to recapture me. I did not pay the money. This incident is on file with the Clearwater Police Department." (Notarized Declaration of Michael Pattinson, Beverly Hills, CA, Sept 20, 1997.

"Dentist Robert Geary of Medina, Ohio, who entered a Sterling seminar in 1988, endured "the most extreme high-pressure sales tactics I have ever faced." Sterling officials told Geary, 45, that their firm was not linked to Scientology, he says. but Geary claims they eventually convinced him that he and his wife Dorothy had personal problems that required auditing. Over five months, the Gearys say, they spent $130,000 for services, plus $50,000 for "gold-embossed, investment-grade" books signed by Hubbard. Geary contends that Scientologists not only called his bank to increase his credit card limit but also forged his signature on a $20,000 loan application. "It was insane," he recalls. "I couldn't even get an accounting from them of what I was paying for." At one point, the Gearys claim, Scientologists held Dorothy hostage for two weeks in a mountain cabin, after which she was hospitalized for a nervous breakdown." (Time, May 6, 1991)

"Violations of civil and human rights, to say nothing of common decency, are so rampant in this organization that it is extremely difficult for an outsider to comprehend why anyone would remain in such a group...

Indeed, this is precisely why the Scientologists continue to get away with such abuse. Former members have such bizarre, outrageous tales to tell that outsiders find their stories very difficult to believe, and the Scientologists do everything they can to discredit the former members as mercenaries, liars, thieves, lunatics and worse (as evidenced by the language that has been used by Scientology leaders and their attorneys to describe me during the course of this litigation). The result is that while **declaration after declaration has been filed detailing horror stories of sleep deprivation, starvation, involuntary incarceration, loss of consortium, child abuse, suicide, financial crimes and more** , Scientology has successfully convinced many courts that the authors of such statements were nothing more than "embittered apostates," as they have now described me." Declaration of Stacy Brooks Young, March 1994: Church of Scientolgy International (CSI) v. Steve Fishman and Uwe Geertz (91-6426-HLH [Tx] [C.D.Cal.]))

"Then in 1978, I was assigned to the Rehabilitation Project Force at the Fort Harrison, the Sea Organization's slave labor camp. I was assigned to it because I had evil thoughts about Hubbard and the Sea Organization. I was utterly shocked and devastated. I was escorted to the RPF location between two heavy men, both well over 6' tall. I was locked up for about 24 hours in a room with no windows. I was under continual guard during that time and slept on a mattress on the floor without sheets or blanket. I was shocked and awake the entire night sometimes weeping and other times completely numb, devoid of all feeling or thought. I had a crazed urge to escape but knew I could not, that I had to finally confront myself and discover how evil and truly bad I was. I felt I was split into several people - one of them a kind, loving person who was in deep shock, the other a cold, calculating, evil-minded person who was intent on harming others for the fun of it, and yet another person who was terribly confused and did not know which of the other two was correctly me. I felt my mind was being ripped apart, that I could not think or feel anything. I forced myself blindly through the routine of having' to run continually (RPF members were not allowed to walk at any time), of having to talk to non-RPF staff only when spoken to, of having to address everyone as "Sir", of having to do menial work of cleaning toilets, of having to wear old, torn and tattered blue overalls, of having to be seen

running in the Florida heat, perspiring and without makeup or hairdo, doing menial and embarrassing work in front of all the public - in pain all the time." (Statement of Hana Whitfield, Aug 8, 1989)

"Conditions were declared. Everyone had to work all day and half the night. We all slept on the floors. People started to break under the presure. New conditions were declared. People were locked up at the bottom of the elevator shaft and fed bread and water."
(Zane Thomas, July, 5, 1995)

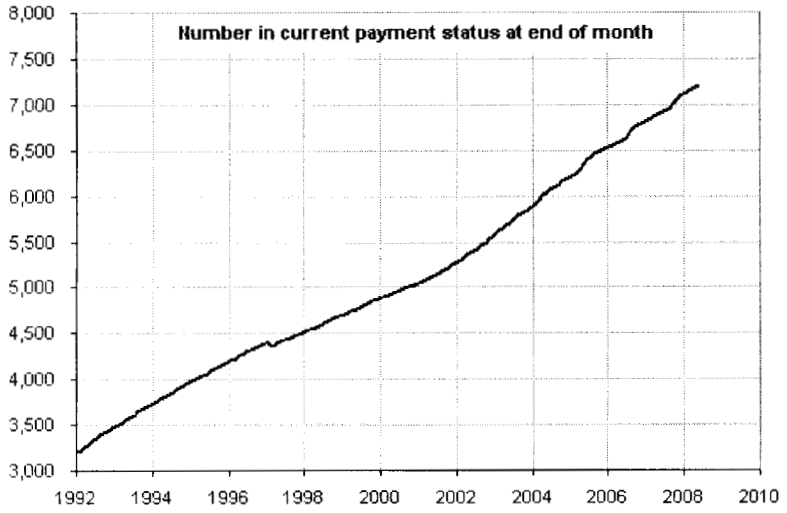
LABELLING DETRACTORS DISABLED

See the Confidential, June 1971 HCO Policy:

> "Policy is that we assign any case or upset in Scientology to past damage and interference with the person by medicine or psychiatry. They were sent to us after medicine or psychiatry had already destroyed them. We cannot be blamed for psychiatric or medical failures."

THE SCIENTOLOGY POLICY IS IRREPERABLY HARMFUL

Dissenters and non-members alike are conferred the status of second class citizens and reduced to psychological case-work - deemed mentally instable, psychologically maladjusted; the consequence of this is that the majority of our population is moving towards social disability and reliance on public assistance (welfare). The effect is staggering and a genuine issue of material fact.



Measured in Thousands (Source: SSA.GOV)

The Scientology Policy is the direct and proximate cause – disabling thousands in the mental health crisis Nationwide. The slippery slope of this curve is a significant issue of fact. Characterize this arrangement as a process of psychological operations generating supporting documentation to render the opposition dysfunctional. The natural effect of the Policy and Agreement can be loss of consortium. Loss of consortium is not a historical tort under English common law but arrived via statute as Lord Campbell's act (9 and 10 Vie. c. 93). The action was originally paired in a Latin expression: "per quod servitium et consortium amisit", translated as "in consequence of which he lost her society and services". The Act reads:

"Sec. 2. It shall be sufficient, if the defendant is advised to pay money into court, that he pay it as a compensation in one sum to all persons entitled under the said act for his wrongful act, neglect, or default…"

The established Statute should permit the determination of the controversy on the merits. The original Court ruling stated the case lacked merit. This continued the cycle of economic deprivation and caused the loss of property.

"[a]lthough the clear policy of the Rules is to encourage dispositions of claims on their merits, trial judges are vested with discretion, which must be liberally exercised, in entering such judgments and in providing relief therefrom." U.S. v. Moradi, 673 F.2d 725, 727 (4th Cir. 1982)

In this matter there was loss of consortium as well as monetary loss through medical malpractice in the course of deceptive trade practice. Posing as a "case manager" for Metlife, the Scientology Orgs presumed to investigate an insurance case that did not even exist for a period of three years (extending from the beginning of Evolve's business through its duration until its closing and possibly continuing thereafter).

SCIENTOLOGY POLICY HAS SEPARATED THE WORK FROM THE AGENT

Scientology barricades the world of the celebrity, remanding the work of the Agent. The Scientology policies make it a crime in the Organization to offer work or assistance to anyone outside the group. In fact, celebrities are often coerced to sign a duplicitous and specious agreement that sets the stage for permanent isolation of the individual. The agreement itself makes

outside interaction with independent agency impossible. (see attached "spiritual release" agreement").

Specifically, paragraph D:

"I further specifically acknowledge that the duration of any such isolation is uncertain, determined only by my spiritual condition, but that such duration will be completely at the discretion of the Case Supervisor"

This indefinite period of isolation is exactly what has happened at Evolve. As Scientology "case management" has compiled evidence for nearly 10 years, Petitioner has good cause to believe that an evidentiary hearing where Defendants are compelled to produce all records would support a constitutional claim. The data collection process admission is specific evidence in the matter and the act is clearly infringing on Evolve's capacity to operate efficiently.

"Discovery is available in habeas corpus proceedings at the discretion of the court for "good cause" shown. See Rule 6, 28 U.S.C. foll. 28 U.S.C. § 2254. "Good cause" is demonstrated when the petitioner establishes a prima facie claim for relief, and a petitioner's claims are specific, not merely speculative or conclusory. Murphy v. Johnson, 205 F.3d 809 (5th Cir. 2000). In order to establish "good cause," a petitioner must "point to specific evidence that might be discovered that would support a constitutional claim." Marshall v. Hendricks, 103 F. Supp.2d 749, 760 (D.N.J. 2000), rev'd in part on other grounds, 307 F.3d 36 (3d Cir. 2002) (citing Deputy v. Taylor, 19 F.3d 1485, 1493 (3d Cir. 1994))." As quoted in Taylor v. Carroll, Civil Action No. 03-0007-SLR , UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE, 2003 U.S. Dist. LEXIS 15724, August 29, 2003, Decided.

Whatever the reason for this lengthy examination, the conduct is not excusable and Defendant cannot establish good cause. The Policies and Agreements of Scientology are detrimental to competition and free markets. Petitioner rejects the Defendant's argument that this type of behavior is uncompetitive.

THE COURT MUST OPPOSE SCIENTOLOGY POLICY

The most compelling reason to oppose Scientology Policy is that America's Social Security system is scheduled for imminent bankruptcy unless Scientology can adapt its system to accommodate non-member labor forces.

A second reason is that Policy is creating a monoculturalism that bridges on totalitarianism or absolutism – where the freedom of expression and opinion, the value of independence itself is in jeopardy.

Scientology policy is inherently antithetical to freedom of expression and seeks to suppress individual creative effort by making it a crime within the organization to help people outside of it. See Hubbard, HCOPL 25 Feb 1966 "Attacks on Scientology" paragraph 4:

"Start feeding lurid, blood sex crime *actual evidence* on the attackers to the press.""

Speaking of the lurid, the behavior of Scientology leader David Miscavige is well reported and an example to his followers. Spending thousands of dollars on whores, the libidinal tendencies of the group precipitated a series of false allegations against Evolve to provoke the younger 20-30 female model division to scurry from the Evolve Talent Agency. Under the guise of "protecting" the girls, models were led away from Class A commercial television and found themselves hosting Porno Conventions and carrying bags of Salami. This is unconscionable wrongdoing. It is the equivalent of unlawful sexual harassment and creates the hostile work environment. The oppressive and humiliating nature of this counseling should inspire the Court to consider punitive damages as well.

Scientology has failed its obligation under federal law to maintain a work environment free of unlawful harassment. Sexual harassment claims must withstand a four pronged test.

"For the purposes of establishing and examining a cause of action, the test can be broken down into four prongs: the complained-of conduct (1) would not have occurred *but for* the employee's gender; and it was (2) *severe or pervasive* enough to make a (3) *reasonable woman* believe that (4) the conditions of employment are altered and the *working environment is hostile or abusive.*" Lehmann v. Toys 'R' Us, Supreme Court of New Jersey, 132

N.J. 587; 626 A.2d 445; 1993. *See also Garziano v. E.I. Du Pont De Nemours & Co.,* 818 F.2d 380, 387 (5th Cir. 1987) ("federal law imposes a specific duty upon employers to protect the workplace and the workers from **sexual harassment**, including redressing known occurrences of **sexual harassment**" (citing 29 C.F.R. § 1604.11(e)) (other citations omitted). The Eleventh Circuit recognized that "the environment in which an employee works can be rendered offensive in an equal degree by the acts of supervisors, coworkers, *or even strangers to the workplace." Henson v. City of Dundee,* 682 F.2d 897, 910 (11th Cir. 1982) (citing *E.E.O.C. v. Sage Realty Corp.,* 507 F. Supp. 599, 609-10 & n.16 (S.D.N.Y. 1981) and 29 C.F.R. § 1604.11(e) (1981) (other citations omitted) (emphasis [**12] added)). *See also Moffett v. Gene B. Glick Co., Inc.,* 621 F. Supp. 244, 272 (D.C. Ind. 1985) (finding harassment of a superior by subordinates, the court was "convinced that the relationship between the parties is immaterial to the question of whether Plaintiff could be harassed in violation of Title VII"). *Powell v. Las Vegas Hilton Corp.*, 841 F. Supp. 1024, (Nev. 1992).

Furthermore, while the basis of sexual harassment is often derived from sexually explicit conversation, the Anderson Report portrays Scientology as a seriously sexually overcharged environment and sexually

explicit conversation is a symptom of every introductory Scientology initial encounter.

"In auditing sessions, where the preclear is not allowed to have inhibitions or to show reticence or reluctance to revealing and discussing the most intimate things, sexual matters are frequently discussed at length and in startling detail and sexual feelings are aroused and dwelt upon. It frequently happens that the auditor is a male and the preclear is a female, or vice versa - both participants often being in their early twenties and sometimes younger This unrestrained dwelling upon sexual topics is sought to be justified by scientologists on the basis that such discussions are "in session", as though that circumstance regularized the debased and erotic prying which psychiatric evidence described as harmful and as bordering on voyeurism in the auditor." Report of the Board of Enquiry into Scientology, by Kevin Victor Anderson, Q.C., Published 1965 by the State of Victoria, Australia.

The work of the Talent Agent is already charged enough by sexual energy and the Scientologists immaturity and clearly wrongful treatment of women needs to be addressed by the Court – it is the primary issue which merits the consideration of the Court and justifies awarding the *Habeas Corpus ex Opus ex Agens* to remove *quid pro quo* scenarios.

Par example: Maria Asipuro (early 20's) A beautiful young aspiring actress and model interviewed at Evolve Talent Agency. Later counseled against utilizing Evolve Talent Agency service, Maria finds herself a pregnant and unwed mother 12 months later.

The industry requires a ruling from the Court – to respect the work, the models and the nature of the media process which provides a living for Union professionals. Taking the work out of the Union domain and creating quick pay off schemes as non-union buyouts as well as contestant/reality based format television where entertainers are not compensated with Union scale wages is further grounds for the Writ of Habeas Corpus ex Opus ex Agens.

Par Example II: Mary Frasier (74 years old) Mary takes the bus to auditions. She lives in subsistent conditions and tries for three unsuccessful years with Evolve Talent Agency to book even a single day of work. Not one single session fee is scheduled for Mary Frasier.

"For me, as a talent agent, I want to be as excited for a 90 year old artist as a twenty year old model and I want to show them equal respect and consideration; because it is an exciting industry and its resources should be available to everyone – regardless of age or religious belief. Furthermore, to deny a person employment or opportunity in show business because they lack Scientology membership credential is a form of reverse religious persecution" (Jonathan Elliott, Journal from the MacArthur School of Leadership, West Palm Beach Atlantic University, 2008).

In Scientology, the collection of data as actual evidence becomes a pernicious and malevolent process.

"THE ONLY WAY YOU CAN CONTROL PEOPLE IS TO LIE TO THEM. You can write that down in your book in great big letters. The only way you can control anybody is to lie to them."

- L. Ron Hubbard, *Technique 88*

"Of course, an opposition is necessary and desirable for the healthy development of any country. " (SPIEGEL INTERVIEW WITH ALEXANDER SOLZHENITSYN, July 23, 2007). Compare this to

> "It is my specific intention that by the use of professional PR tactics any opposition be not only dulled but permanently eradicated. This takes data and planning before positive action can occur." Scientology, CONFIDENTIAL, PR SERIES HANDLING HOSTILE CONTACTS/DEAD AGENTING, 30 May 1974.

"KSW stands for Keeping Scientology Working, a policy letter written in 1965 by L. Ron Hubbard, Scientology's founder. In the letter, Hubbard, a science fiction writer, outlined 10 steps to ensure survival of the movement. He commends members for carrying out the first part of the mission, but urges them to take it further and eradicate what he called "incorrect technology."

"This point will, of course, be attacked as 'unpopular,' 'egotistical' and 'undemocratic,'" Hubbard wrote in the letter. "It very well may be. But it is also a survival point. And I don't see that popular measures, self-abnegation and democracy have done anything for Man but push him further into the mud." (http://newsblogs.chicagotribune.com/religion_theseeker/2008/01/fyi-on-ksw.html)

So the techniques of Hubbard and Scientology are designed to 1) control media for the purposes of increasing Church public relations and 2) discriminate against non-members in the media related industries because they prevent effective Church PR co-ordination. The effect of this is to create a sociological condition of 1st and second class citizens.

In Hall v. Werthan Bag Corp., 251 F. Supp. 184 (M.D. Tenn 1966), the court said:

"Racial discrimination is by definition class discrimination. If it exists, it applies throughout the class. This does not mean, however, that the effects of the discrimination will always be felt equally by all the members of the racial class...But although the actual effects of a discriminatory policy may thus vary throughout the class, the existence of the discriminatory policy threatens the entire class. And whether the Damoclean threat of a racially discriminatory policy hangs over the racial class is a question of fact common to all members of the class."

"Pragmatic, dogmatic, controlling, guarded are all descriptions that can be applied equally to the cult….just as the polite and smiling face of the actor and cult representative forms a barrier to further inquiry, this smooth façade also masks a fundamental suspicion of the outside world." (Tom Cruise, An Unauthorized Biography, Andrew Morton, St. Martin's Press, 2008).

"It was a place that exuded paranoia." (Morton, supra)

THE CHURCH IS OPEN FOR BUSINESS

"One man averaged almost $200,000 a year in commissions from the fees of new members he had solicited to become Scientologists…Documents from 12 Scientology organizations, all but one dated 1992, list $275 million in assets… For example, the buildings in Clearwater house the church's spiritual headquarters, known as the Flag Service Organization. It had assets last year of $48 million and revenues of $74.3 million. Of those revenues, $24.3 million was transferred to the "mother church" - the Church of Scientology International in Los Angeles." (Scientology Sells... And Profits -- IRS Files Shed Light On Church's Finances, St. Petersberg Times, Oct 21, 1993). Church officials claim to have no business in entertainment and yet they charge for a seminar called "How To Get An Agent."

In a recent interview, actor Jason Beghe described the process of Scientology celebrity recruitment:

""Scientology," Beghe says, "delivers what it promises under the guise of tearing away falsity, neuroses, psychoses. It creates a brainwashed, robotic version of you. It's a 'Matrix' of you, so you're communicating with people all the time using Scientology. So we're seeing you 'via' Scientology. And it creates an addiction, so you come back for more."

He says that he initially was recruited through acting teacher **Milton Katselas**' class. Katselas has been cited in many publications, including The New York Times, for exerting pressure on his students to join the sect.

"He gets kickbacks," Beghe says. Among Katselas' students have been at least half a dozen celebrity Scientologists, including **Giovanni Ribisi** (who

is thought to have recruited "My Name Is Earl" star **Jason Lee** and, in turn, **Ethan Suplee**) and his sister, **Marisa**, **Leah Remini** and **Anne Archer**."

ACTOR JASON BEGHE: SCIENTOLOGY IS 'BRAINWASHING', By Roger Friedman, Fox News, Wednesday, April 16, 2008

See HCO POLICY LETTER OF 16 FEBRUARY, 1969 (Hubbard Communication Office):"The vital targets on which we must invest most of our time are: Taking over the control or allegiance of the heads or proprietors of all news media."

Church of Scientology ("CSI") has established a massive presence on television as well. See Nielsens: 'CSI,' 'Trace' take the top spots, USA TODAY, 11/13/2007: "Thursday's crossover episodes on CBS gave *CSI* (21.9 million) its biggest audience since the season premiere". Here's Friday's A&E primetime lineup:

7:00pm	7:30pm	8:00pm	8:30pm	9:00pm
Friday July 18	**CSI Miami** *100 - Death Pool 100* TV14 V-L | cc | Buy the DVD	**CSI Miami** *101 - If Looks Could Kill* TV14 V-L | cc | Buy the DVD	**The Cleaner** *Pilot* TV14 L | cc	

SCIENTOLOGY TARGETED CELEBRITIES FOR RECRUITMENT.

They define CELEBRITY (all caps) as being:

"ANY PERSON IMPORTANT IN HIS FIELD OR AN OPINION LEADER OR HIS ENTOURAGE, BUSINESS ASSOCIATES, FAMILY OR FRIENDS, WITH PARTICULAR ATTENTION TO THE ARTS, SPORTS, AND MANAGEMENT AND GOVERNMENT"
-HCO PL of 23 May 1976 revised 10 Jan 1991 is title "Celebrities".

Hubbard writes: "*"Having been awarded one of these celebrities, it will be up to you to learn what you can about your quarry and then put yourself at every hand across his or her path, and not permitting discouragements or 'no's' or clerks or secretaries to intervene, in days or weeks or months," (Project Celebrity, 1955).*

TAKING CONTROL OF THE MEDIA IS GROUNDS FOR TAKING IT BACK AND IS COMPELLING INTEREST TO THE STATE.

A ruling in this matter to return the body of work to Agents would improve administrative efficiency at the level of the Unions and restore equitability in the entertainment marketplace.

A batch of cancelations followed by 12 months without a single days work in Class A commercial television has destroyed Evolve Talent Agency business. Business is defined in this matter as the commission derived from actors/models wages for commercials/television and film. Further, Scientology is engaged in psychological coercion and intimidation in the production process of Hollywood.

"Grey, who had recently joined the studio, entered the talks determined to make Cruise accept a smaller share of the gross revenues than he had from the first two installments in the franchise. (For those films, the actor reportedly took home an unheard-of 30 percent of the total revenue.) Leaving the office one night, the diminutive Grey, walking to his car in the Paramount lot, suddenly found himself surrounded by more than a dozen Scientologists, who pressured him to ease up on the actor, according to the source." (Source: http://www.radaronline.com/exclusives/2006/09/brad-greys-scientology-scare.php)

> "To this day, people who tangle with Scientology find themselves subject to aggressive efforts at intimidation. Mike Farrell, who played B.J. on the television series M*A*S*H, crossed paths with the church when he contacted the Cult Awareness Network for information on a film project about child abuse…
> "Not only did they picket, but they sort of get in your face and give you this loud and incessant spiel that doesn't allow for dialogue -- it's just a kind of attempt to intimidate…In the last few months Farrell has gotten numerous strange phone calls, one telling him (falsely, as it turned out) that an old friend had died. There have been so many that now when he gets calls after midnight at his home, he answers, "Hubbard was crazy." Sometimes, he says, there's a long silence before the caller hangs up."
> (Premiere, Sept 1993, "Catch a rising star").

Cathy Smith was a Scientologist who injected John Belushi with a fatal dose of drugs was a Scientologist. Mark Chapman was a Scientologist and the shooter of John Lennon. Charles Manson was a Scientologist and

convicted for the stabbing of Sharon Tate. Nicole Kidman "feared blackmail" over sex tapes made with Scientologists. (Morton, 2008)

Cite 15 U.S.C. §45, 18 U.S.C Sec. 1951.

It leads us wonder if Hubbard's "hunt" for celebrities has gone too far.

CONCLUSION

As Scientology "hunts" and "quarries" top Celebrities, the income of the Agency business is imperiled. Scientology isolationism effects Agent networking. From the earliest beginnings of Agenting, since the time when William Morris, a 25 year old New York upstart opened his first one room office on 14th Street in Manhattan, Agents have depended on actors.

"Working on commission, independent agents like Morris competed to book acts into the growing network of theatre circuits. How many weeks of work they could promise depended on their connections with the impresarios…" (The Agency, William Morris and the Hidden History of Show Business, Harperbusiness, 1996, pg.21)

Scientology has created a process that inherently discriminates against individual effort and seeks to control and manipulate the buying and selling of products and services in favor of the member scientologists. Anyone

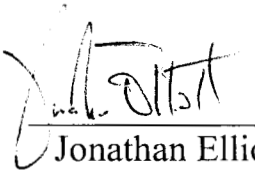
working outside the Scientology system is considered "anti-social" and assigned a condition of case-management and labeled a mental health risk.

Continued silence is a permission that compromises the actor's fair Union wages and allows the dismantlement of the Agency representation process and the subsequent unfair labor practice that is a direct cause of the loss of Union work and destroying the residual payment system that is the backbone of an actor's retirement. A writ of Habeas Corpus would return the "body of work" to the Agencies and set a precedent for the fair and equal distribution of labor throughout these United States of America.

STATE OF FLORIDA
County of Palm Beach

July 19, 2008

Respectfully,



Jonathan Elliott
c/o
"Harmony House"
123G S. Longport Circle
Delray Beach, Florida
33444

Writ of Habeas Corpus

The Defendants shall return to Petitioner and Agencies the body of work of Agents in the manner described below. (1-10).

The "body of work of Agents" or *Corpus ex Opus ex Agens* relates specifically to the casting process and production of commercials/television and film.

1. Defendants shall honor the Petitioner's demand that the registration at casting be expedited.
2. Defendants shall honor the Petitioner's demand for the renewal of the original office lease at 3435 Wilshire Blvd, Suite 2700. 27th Floor. Los Angeles, CA
3. Defendants shall honor the Petitioner's demand for fair hiring practices at Studios, Networks & Advertising Agencies.
4. Defendants shall honor the Petitioner's demand to return all work in television, motion pictures and commercial advertising back into the Unions of the AFL-CIO (SAG/AFTRA).
5. Defendants shall honor the Petitioner's demand that no actor/model or extra in commercials/television/radio/film shall be hired without a Licensed Agent.
6. Defendants shall pay $3.42 (cost of property) and $3.6 million (lost wages calculated by actual number of agents divided by actual agent revenue according to Dept. of Labor 2006 survey) as tax free compensatory damages.

Ordered.

_____ _____

Date Judge:

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Powell v. Las Vegas Hilton Corp., 841 F. Supp. 1024, (Nev. 1992).

In Hall v. Werthan Bag Corp., 251 F. Supp. 184 (M.D. Tenn 1966)

15 U.S.C. §45.

18 U.S.C Sec. 195.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered via US Mail on the 19th day of July, 2008, to all those on the attached service list.

Jonathan Elliott

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Church of Scientology
Flag Service Organization
(hereinafter referred to as "the Church")
Agreement and General Release
Regarding Spiritual Assistance

1. I, _____, recognize, acknowledge and agree that I am exclusively responsible for my present and future condition in life and for the choices and decisions I make affecting my life. With that in mind, and solely of my own volition and in the independent exercise of my own free will, I am voluntarily signing and submitting to CHURCH OF SCIENTOLOGY _____ (hereinafter the "Church") this AGREEMENT AND GENERAL RELEASE REGARDING SPIRITUAL ASSISTANCE (hereinafter this "Contract") so that, upon its acceptance by the Church, I may participate in Scientology Religious Services and spiritual assistance under the terms, conditions, covenants, waivers and releases I agree to by signing this contract, and by doing so, I specifically acknowledge and reaffirm all other waivers, releases and agreements I have signed with any Church of Scientology.

2. This contract is my statement of my personal understanding concerning Scientology religious tenets and my statements reflecting my own beliefs and desires. By signing this Contract, I recognize, acknowledge and agree that:

a. Scientology is a religion, the Church is a church of the Scientology religion and all the services and activities of the Scientology religion are exclusively religious in nature.

b. Scientology is unalterably opposed, as a matter of religious belief, to the practice of psychiatry, and espouses as a religious belief that the study of the mind and the healing of mentally caused ills should not be alienated from religion or condoned in nonreligious fields. I am in full agreement with this religious belief. I do not believe in or subscribe to psychiatric labels for individuals It is my strongly held religious belief that all mental problems are spiritual in nature and that there is no such thing as a mentally incompetent person-- only those suffering from spiritual upset of one kind or another dramatized by an individual. I reject all psychiatric labels and intend for this Contract to clearly memorialize my desire to be helped exclusively through religious, spiritual means and not through any form of psychiatric treatment, specifically including involuntary commitment based on so-called lack of competence. Under no circumstances, at any time, do I wish to be denied my right to care from members of my religion to the exclusion of psychiatric care or psychiatric directed care, regardless of what any psychiatrist, medical person, designated member of the state or family member may assert supposedly on my behalf. If circumstances should ever arise in which government, medical or psychiatric officials or personnel or family members or friends attempt to compel or coerce or commit me for psychiatric evaluation, treatment or hospitalization, I fully desire and expect that the Church or Scientologists will intercede on my behalf to oppose such efforts and/or extricate me from that predicament so my spiritual needs may be addressed in accordance with the tenets of the Scientology religion.

c. As I so strongly disagree, as a matter of religious principle, with the use of psychiatric treatment for anyone, including myself, I reject the usage of psychiatric labels and I believe in assisting individuals through religious and spiritual means. Therefore, I am hereby specifying that should I get into a situation in the future, unlikely as it is, where others may think that I need psychiatric treatment of any kind, that I instead desire to receive Scientology spiritual assistance and that it can include, but is not limited to, the Introspection Rundown. Further, I realize that in the future it may consequently be suggested by a senior Scientology minister, should the need arise, that I receive such spiritual assistance, and again, I want to make it clear that under such circumstances I desire to receive Scientology Spiritual Assistance, which may include, but not be limited to, the Introspection Rundown.

d. The Scientology religion teaches that the spirit can be saved and that the spirit alone may save or heal the body, and the Introspection Rundown is intended to save the spirit. I understand that the Introspection Rundown is an intensive, rigorous Religious Service that includes being isolated from all sources of potential spiritual upset, including but not limited to family members, friends or others with whom I might normally interact. **As part of the Introspection Rundown, I specifically consent to Church members being with me 24 hours a day at the direction of my Case Supervisor, in accordance with the tenets and custom of the Scientology religion. The Case Supervisor will determine the time period in which I will remain isolated, according to the beliefs and practices of the Scientology religion. I further specifically acknowledge that the duration of any such isolation is uncertain, determined only by my spiritual condition, but that such duration will be completely at the discretion of the Case Supervisor.** I also specifically consent to the presence of Church members around the clock for whatever length of time is necessary to perform the Introspection Rundown's processes and to achieve the spiritual results of the Introspection Rundown. I understand, acknowledge and agree that the Introspection Rundown addresses only the individual's spiritual needs and I freely consent, without reservation, and without condition or limitation, to Church members conducting the Introspection Rundown, and that I accept and assume all known and unknown risks of injury, loss, or damage resulting from my decision to participate in the Introspection Rundown and specifically absolve all persons and entities from all liabilities of any kind, without limitation, associated with my participation or their participation in my Introspection Rundown.

I HAVE CAREFULLY READ THIS CONTRACT AND FULLY UNDERSTAND ITS CONTENTS AND CONSEQUENCES. I ALSO UNDERSTAND THAT I AM NOT ELIGIBLE FOR SPIRITUAL ASSISTANCE UNLESS I SIGN THIS CONTRACT. WHILE IT IS UNLIKELY THAT I WILL EVER BE IN A CONDITION WHERE PSYCHIATRIC INTERVENTION MAY BE DEEMED AN OPTION, I HEREWITH REAFFIRM THAT IN SUCH AN EVENT I WISH TO RECEIVE ONLY SCIENTOLOGY SPIRITUAL ASSISTANCE, INCLUDING, BUT NOT LIMITED TO THE INTROSPECTION RUNDOWN, AND THAT THIS CHOICE IS AN INDEPENDENT EXERCISE OF MY OWN FREE WILL. I FULLY UNDERSTAND THAT BY SIGNING BELOW, I AM FOREVER GIVING UP MY RIGHT TO SUE THE CHURCH, ITS STAFF AND ANY OF THE RELEASEES NAMED IN THE GENERAL RELEASE I SIGNED, FOR ANY INJURY OR DAMAGE SUFFERED IN ANY WAY CONNECTED WITH SCIENTOLOGY RELIGIOUS SERVICES OR SPIRITUAL ASSISTANCE.

I sign this Agreement and General Release Regarding Spiritual Assistance on this __ day of _____, 20__, intending to be legally bound to it, and request that I be permitted to participate in spiritual assistance.

_____
(SIGNATURE OF APPLICANT}

_____
(Printed Full Name)

_____
(Home Address)

_____
(SIGNATURE OF PARENT OR GUARDIAN, IF APPLICANT IS A MINOR)

_____
(Printed Full Name)

_____
(Home Address)

_____

_____
(SIGNATURE OF WITNESS)

_____
(Printed Full Name)

Having reviewed the above Agreement and General Release for spiritual assistance, including, but not limited to the Introspection Rundown, the Church, in reliance upon, and conditioned upon, the truthful promises, representation and agreements made therein, on this ____ day of _____, 20__, accepts _____ for participation in spiritual assistance in the future as needed.

CHURCH OF SCIENTOLOGY _____

By its: _____
(Title)

(SIGNATURE) _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT COURT OF FLORIDA
JUDGE DONALD MIDDLEBROOKS

Jonathan Elliott, formerly D.B.A ,
"Evolve Talent Agency",

PLAINTIFF

vs. File No. _____

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation; FLAG SERVICES ORGANIZATION INC., RELIGIOUS TECHNOLOGY CENTER, et al.

DEFENDANTS
_____ /

PETITION FOR WRIT OF HABEAS CORPUS
(Ex Corpus ex Opus ex Agens)

1. Petitioner, Jonathan Lee Elliott, while applying for this Writ, is under custodial care and/or restrained of his liberty at "Harmony House", Del Ray Beach, Florida by Defendants. In re: ex corpus ex opus ex agens.
2. Petitioner is confined and/or held in custodial under process of HCO Policy, Confidential, June 1971. (see attached). The Confidential

Scientology process is the direct and proximate cause – separating the work from the Agents.

3. The U.S. Southern District of Florida Court first ruling on the original complaint was the equivalent of a sentence that continued the confinement and allowed the Defendants to withhold work.

4. The grounds on which Petitioner claims that his imprisonment or detention is illegal is that he was denied his rights to due process under the Fifth Amendment and Section 1 of the Fourteenth Amendment to the United States Constitution.

5. The facts supporting the allegations are, briefly stated, as follows:

(a) The prejudicial ruling of the Courts in the matter of the original complaint allowed for the continued detention of Petitioner.

(b) The dismissal affirmed the Defendant's right to disestablish Petitioner's business.

(c) The dismissal affirmed the Defendant's right to deprive Petitioner of property. As a direct result, the property was sold and Petitioner was forced from the family residence of 38 years.

The foregoing facts are more fully set forth in the memorandum of Points and Authorities attached hereto and by this reference incorporated herein.

6. No other applications, petitions or motions have been filed or made with regard to the same detention, restraint or custodial care.

The delay of almost four years was occasioned by the fact that the Petitioner was totally unaware of the existence of this remedy and on the additional following grounds:

(a) Jonathan Elliott was detained in custodial care in Delray Beach, Florida, more than 3,000 miles from his hometown.

(b) Within one year after his arrival, Board certified psychiatry decided Elliott was mentally disturbed and diagnosed him psychotic.

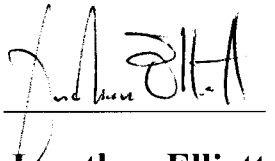
(c) He was not aware of the existence of a possible writ of habeas corpus based on the reversible error of the first rulings.

WHEREFORE, Petitioner prays as follows:

1. That the Court issue its Order to Show Cause returnable before this Court at a date, time and place to be specified inquiring into the legality of the Petitioner's custodial care and show cause for refusing Petitioner's August 26, 2008 request for online support through LA Casting services.
2. That following receipt of the return and the traverse thereto, and after hearing, that this Court issue the attached writ ordering Petitioner's work discharged from custody, the body of work returned by mandamus and the additional extraordinary remedies outlined in Petitioner's behalf.

STATE OF FLORIDA
County of Palm Beach
July 19, 2008

Respectfully,



Jonathan Elliott
c/o
"Harmony House"
123G S. Longport Circle
Delray Beach, Florida
33444

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered via US Mail on the 14th day of July, 2008, to all those on the attached service list.

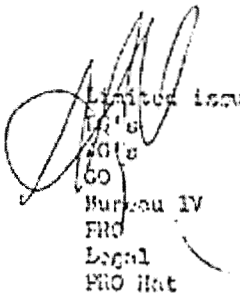
Jonathan Elliott

SERVICE LIST

Zuckerman Spaeder Llp
1800 M Street, NW Suite 1000
Washington, DC 20036-5807
202.778.1800
202.822.8106 fax
Attorneys for Appellee
Church of Scientology International

HUBBARD COMMUNICATIONS OFFICE
Saint Hill Manor, East Grinstead, Sussex.

HCO POLICY LETTER OF 29TH JUNE 1971



Limited Issue.
E's
AO's
CO
Bureau IV
FBO
Legal
FBO Mat

CONFIDENTIAL

Policy is that we assign any case or upset in Scientology to past damage and interference with the person by medicine or psychiatry. They were sent to us after medicine or psychiatry had already destroyed them. We cannot be blamed for psychiatric or medical failures.

By continually reporting this, make the AMA, Nats, etc very wary of using our name on these psychiatric and medical failures. Both subjects are guilty and the statement is demonstrably true. Use it often. Make it known to the enemy that this is our policy as a restraint on their fetid imaginations: "Every time you attack us we will disclose more records of your failures".

L. RON HUBBARD
FOUNDER

LRH:pc

HUBBARD COMMUNICATIONS OFFICE
Saint Hill Manor, East Grinstead, Sussex Remimeo
HCO Policy Letter of 18 October 1967
Issue IV

PENALTIES FOR LOWER CONDITIONS

(Applies both Orgs and Sea Org)

LIABILITY Suspension of pay and a dirty grey rag on left arm and day and night confinement to org premises.

TREASON Suspension of pay and deprivation of all uniforms and insignia, a black mark on left cheek and confinement on org premises or dismissal from post and debarment from premises.

DOUBT Debarment from premises. Not to be employed. Payment of fine amounting to any sum may have cost org. Not to be trained or processed. Not to be communicated or argued with.

ENEMY SP Order. Fair game. May be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed.

LRH:jp

L. RON HUBBARD

Founder

HUBBARD COMMUNICATIONS OFFICE
Saint Hill Manor, East Grinstead, Sussex

HCO POLICY LETTER OF 25 FEBRUARY 1966

Remimeo
Exec Sec Hats
CO Sec Hat

HCO DIV
Legal Officer Hat LRH Comm
LRH Comm Hat
Dist Sec Hat
Press Hat
Sect 5 Dept 3

ATTACKS ON SCIENTOLOGY
(Additional Pol Ltr)

Anyone proposing an investigation of or an "Enquiry" into Scientology must receive this reply and no other proposal:

"We welcome an investigation into (Mental Healing or whoever is attacking us) as we have begun one ourselves and find shocking evidence".

You can elaborate on the evidence we have found and lay it on [illegible word] attacking the attackers only.

NEVER agree to an investigation of Scientology. ONLY agree to an investigation of the attackers.

This was the BIG error made in Victoria. I okayed an Enquiry into all mental healing. I ordered evidence on psychiatric murders to be collected. Non-Compliance with these orders brought on the loss of Melbourne and the law in Victoria against Scientology. This was the non-compliance that began it. The original order I gave was relayed as "we welcome an Enquiry into Scientology ...." or it was changed to that in Melbourne.

2

This is correct procedure:

(1) Spot who is attacking us.

(2) Start Investigating them promptly for FELONIES or worse using our own professionals, not outside agencies.

(3) Double curve our reply by saying we welcome an investigation of them.

(4) Start feeding lurid, blood, sex, crime actual evidence on the attackers to the press.

Don't ever tamely submit to an investigation of us. Make it rough,

rough on attackers all the way.

You can get "reasonable about it" and lose. Sure we break no laws. Sure we have nothing to hide. BUT attackers are simply an anti-Scientology propaganda agency so far as we are concerned. They have proven they have no facts and will only lie no matter what they discover. So BANISH off ideas that any fair hearing is intended and start our attack with their [illegible word]. Never wait. Never talk about us - only them. Use their blood, sex, crime to get headlines. Don't use us .

I speak from 15 years of experience in this. There has never yet been an attacker who was not reeking with crime. All we had to do was look for it and murder would come out.

They fear our Meter. They fear freedom. They fear the way we are growing. Why?

Because they have too much to hide.

When you use that rationale you win. When you go dishwater and say "We honest chickens just plain love to have you in the coup, Brer Fox." we get clobbered. The right response is, "We militant public defenders of the freedom of the people, we want there Fox investigated for eating Living chickens. M Shift the spotlight to them. No matter how. Do it!

You can elaborate on the formula. Let's say some other branch of government wants to investigate us via the press. Just apply the formula.

"We welcome a public enquiry into (that branch activity) as we have begun to investigate their (------)." It will always work. It would have worked on the U.S. F.D.A. when they first began five years ago in their raid on D.C. They run! And that's all we want.

HOW TO STOP ATTACKS

The way we will eventually stop all attacks from here on out is by processing the society as follows:

(1) Locate a source of attack on us.

(2) Investigate it.

(3) Expose it with wide lurid publicity.

You see the same thing in a preclear. He has a rotten spot in his behavior. He attacks the practitioner. The spot is located on a meter. It blows and the preclear relaxes.

Well this is just what is happening in the society. We are a practitioner to the society. It has rotten spots in it. Those show up in attacks on us. We investigate and expose -the attack ceases.

We use investigators instead of E-Meters. We use newspapers instead of auditor reports. But it's the same problem exactly.

So long as we neglect our role as auditor-to-the-society we will be attacked.

Society is pretty crazy. It's a raw jungle. So it will take a lot of work. We must be willing to put in that work as a group or we'll be knocked about.

Remember. CHURCHES ARE LOOKED UPON AS REFORM GROUPS.

Therefore we must act like a reform group.

The way to seize the initiative is to use our own professionals to investigate intensively parts of the society that may attack us. Get an ammunition locker full. Be sure of our facts. And then expose via the press.

If we do this right, press, instead of trying to invent reasons to attack us will [sic] start hanging around waiting for our next lurid scoop.

We MUST convert from an attacked group to a reform group that attacks rotten spots in the society. We should not limit ourselves to mental healing or our own line. We should look for zones to investigate and blow the lid off and become known as a mighty reform group. We object to slavery, oppression, torture, murder, perversion, crime, political sin and anything that makes Man unfree.

The only error we can make is disperse our investigation. We do a preliminary look, then we must select a target and investigate it until we have the cold facts and then BANG, fire the salvo.

Don't worry about libel if our facts indicate rottenness. The last thing that target will do is sue as then we would have a chance to prove it in court, which they are terrified of our doing.

Remember - the only reason we are in trouble with the press or governments is that we are not searching out and exposing rotten spots in the society. We must practice on the whole group called society. If we do not it will attack us just as a preclear will attack a Scientologist that won't audit him.

To get wholly over to cause we must select targets, investigate and expose before they attack us.

We have at this writing a long way to go. But we might as well start somewhere. Begin by investigating any attacking group and expose the dead bodies. Then work on to our selecting the targets.

And that will handle it all.

L. RON HUBBARD

LRH:nl:ldm

THIS IS THE BUSINESS PLAN SCIENTOLOGY INTERFERRED WITH IN CHINA

PROSPECTUS

777,000,000 Shares

Evolve Talent Agency

Common Stock

All of the 777,000,000 shares of Common Stock of Evolve Talent Agency ("Evolve" or the "Company") offered hereby are being offered by Evolve. Prior to this offering there has been no public market for any securities of Evolve. For a discussion of the factors that were considered in determining the initial public offering price, see "Underwriting."

The Common Stock has not yet been approved for listing on the New York or Shanghai Stock Exchange.

See "Investment Considerations" for a discussion of certain factors which should be considered by prospective purchasers of the securities offered hereby.

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THESEC or *Shanghai Stock Exchange* NOR HAVE THEY PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS, ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE

	Price to Public	Underwriting Discount	Proceeds to Company
Per Share	$127.00	$8.01	$123.15
Total	98,679,000,000	2,991,143,862	95,687,856,138

Purposes of Incorporation:

a)	To establish an ideal agency that stresses a spirit of freedom and open-mindedness, and where people with sincere motivation can exercise their technological skills to the highest level
b)	To promote China, European and United States relations and to elevate the nation's culture through dynamic technological and manufacturing activities;
c)	To promptly apply highly advanced technologies to common households;
d)	To rapidly commercialize superior technological findings in universities and research institutions that are worthy of application in common households;
e)	To bring computing and similar devices into common households and to promote the use of home electric appliances;
f)	To actively participate in the reconstruction of war-damaged communications network by providing needed technology;
g)	To produce high-quality shows and to provide technology services that are appropriate for the coming new era;
h)	To promote the education in media among the general public.

Business

Evolve Talent Agency was created 9/9/1999 in Los Angeles, California as commercial, film and television Agency representing models, writers, models, directors, dancers, musicians and other types of artists. The company began under the direction of Jonathan Elliott who had worked previously with John Robert Powers International, Glamour Models and The Daniel Hoff Agency.

Jonathan Elliott has also worked as a Stockbroker for Cantor, Fitzgerald and Oppenheimer. He has an understanding of both media and the investment banking/financial industries.

Evolve Talent Agency will also be a consolidated media holding company and seek to acquire key positions in media/technology oriented companies for the sole purpose of creating vendor relationships to establish job opportunities for the talent it represents.

Acquisition considerations:

DISNEY	1910000000	$40	$38,200,000,000
CBS CORP	681000000	$25	$34,050,000,000
OMNICOM	320300000	$50	$8,007,500,000
(CNK)	107360000	$15	$805,200,000

Essentially the company will seek holdings in media and technology related services and enterprises to facilitate a larger network of influence for the commercial, television and film talent represented by the Evolve Talent Agency client division.

The underwriting company invest a 90% value of the portfolio for the purposes of continuing investment interests worldwide.
A quarterly performance will be scheduled and an annual meeting will be held each year in September.

The idea of the company was based on the hierarchy-infrastructure discrimination (job related) factors present in the market for the Agency. There were so many tremendous difficulties in the market (in terms of breaking new talent i.e. making stars - "celebrities") that Jonathan decided the only realistic way to bring new talent to the market was to own/control the boards of the major media studios to facilitate the process.

Thus, the idea of the ETA - holding company.

The concept is to bring together major underwriters and bring them onboard to develop the financial - business influence of the company by essentially "timing buys" - creating majority interest in companies at the time of record date, voting in CEO's, reviewing the decision making hierarchy, firing, rehiring, and putting ETA talent into positions.

Jonathan Elliott will retain 5% of the stock in the offering leaving 815,850,000 shares outstanding approximately.

For more information call Mr. Elliott at 561 843 1402

Evolve Talent

Agency

The Evolve Advertising Center

In fact, my first plan for China involves the creation of the Evolve Advertising Center (EAC) Group 1 Studio Complex. This phase of development will be financed by the first initial offering for ETA common A shares.

The (EAC) Group 1 Studio Complex will be a combination of production facilities for filming, sound recording, post-production and editing as well as an office environment where the major advertising groups of the world will be invited to come together to create final product where they can get the work done efficiently and at less cost.
Most importantly, the EAC will be a place of education and teach new students the principles of advertising, the concepts and language, the art and business of the profession so that they may graduate from the School with a State sponsored degree as Bachelor's of Science in the field of Marketing & Advertising.
Step two involves the sponsoring of Talent Agents and the packaging of new talent simultaneously. The goal of Evolve Talent Agency is to create working positions for 2500 Chinese Agents from Los Angeles to New York, China to London and Paris. I do not expect the goal to be easily met, but given the level of competition in our media environment, I hope the Chinese Government and Chinese community can one in the same, appreciate my need for support.
Let me now discuss the timeline for implementations and the organizational model as I see it. This will of course be subject to change as the Scientology Organization scrutiny and obviously inevitable condemnation of our business practices in the face of their design to control the pace and tempo of the public relations/ entertainment/ news sources is a never ending problem for our profits and economic development within the United States and abroad.

1. The reapplication process for licensing, insurance bonding
in the United States.
2. The re-establishment of offices in California – working both on the actual and virtual level.
3. The move to Shanghai in June/July
4. The recruitment of new talent.
5. The beginning of new bookings and business.
6. The recruiting process for students and future Agents.

7. Establishing Channel 7 Evolve.

About Channel 7 Evolve.

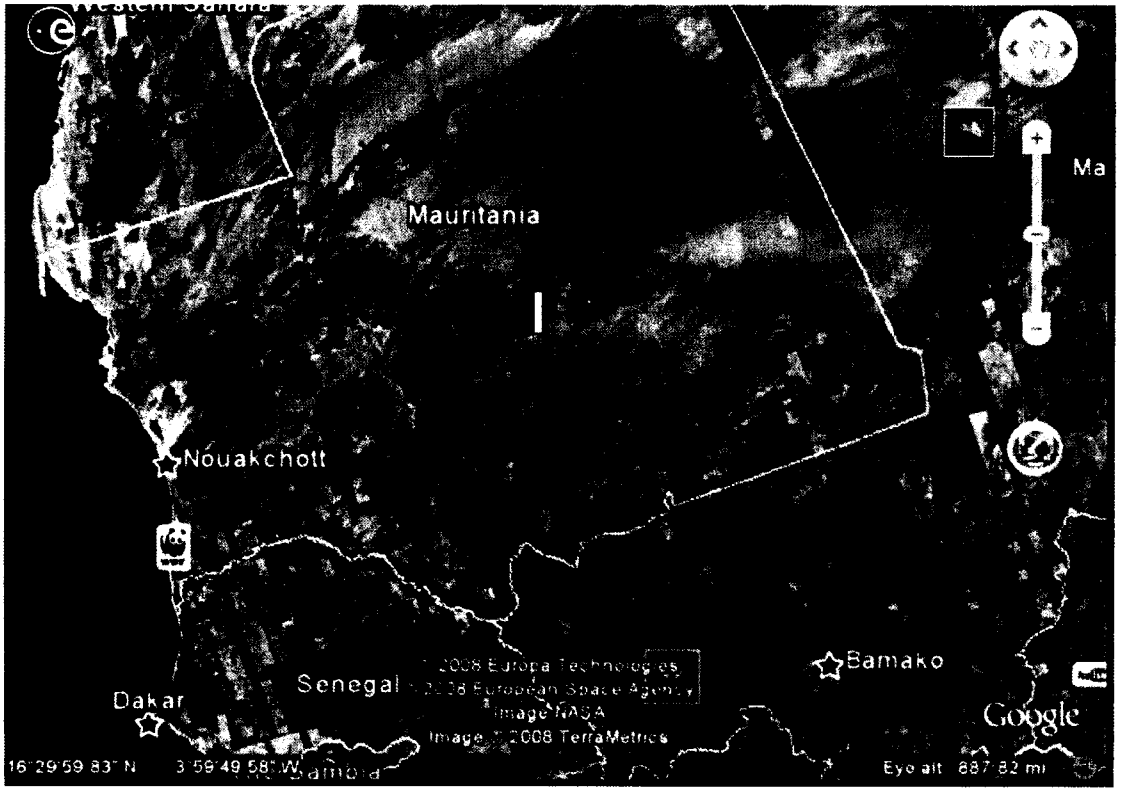
Evolve World-Wide (EWW) will issue a class A preferred share at first offering. EWW will establish a broadcast channel for entertainment and media. Evolve will produce a line of computers that will also work as television and establish Channel 7 Evolve for media content including but not limited to news, feature films, episodic programming and interactive discussion forum.

EVOLVE RETAIL

Evolve will develop a chain of retail stores inline with a Walmart concept, except Evolve would provide a Class B share for Chinese factory workers as a profit sharing plan.

EVOLVE WATER, GAS AND OIL

Evolve will departmentalize its resources to include the exploration of gas and oil in Africa, China and Latin America as well as provide efficient solutions to water purification and distribution for countries worldwide. Below is a map of the first drilling site in Mauritania.



Evolve Gas Oil and Water is interested in the Passarell water process and developing the resources of this technology throughout Africa to bring a pure and stable water supply to a continent deprived.

Read these extracts from Passarell's own marketing:

Development of seawater desalination throughout the world

The "Passarell" process, a patented state-of-the-art desalination technology. The "Passarell" process is a superior vapor compression system with Zero Waste Return Technology. This is quite different from other processes such as RO, MEB, and MSF.

* The "Passarell" engineered and constructed for performance, cost efficiency and versatility and utilizes the most durable materials to provide the highest performance and minimum maintenance.
* The "Passarell" vapor compression system is a highly developed proprietary technology, computer controlled, compact, economical, easy to operate, non-toxic, and environmentally compliant.
* The "Passarell" process has the versatility to operate: electricity, natural gas, gas turbine generated electricity and other configuration and/or cogeneration, which has profitable benefits for your water requirements.
* The "Passarell" is a distillation method where the intake water thermally energized by the circulating energy (BTUs), transfers the outgoing processed water to the incoming seawater. A centrifugal vapor compressor develops thermal deferential with the condensor/evaporator developing the vapor for distillation. The vapor passes through the centrifugal compressor that increases the temperature to vaporize the seawater. The vapor that extracts from falling seawater in the tubes draws through the centrifugal compressor to increase the temperature and condenses to produce potable water. This water is free of unwanted elements in the same manner that nature produces water-vaporizing seawater into clouds, then rain, which is a distillate of seawater.
* The "Passarell" easily produces water quality as low as 100 ppm of total dissolved solids (TDS), and less, at the lowest cost, by extracting fresh potable water from seawater and rejecting dissolved elements.

* The "Passarell" has 30 plus year longevity when built using high quality materials. The unique concrete design housing prevents heat loss, noise and reduces maintenance while providing superior performance.
* The "Passarell" has additional benefits including the ability to operate at optimized temperatures that will reduce fouling and maintenance.
* The Zero Waste Water Technology will remove 96% of the product water leaving the waste elements to recover for industrial product.

As the plant size increases, the cost of water per unit is less. The cost for producing one-acre-foot of water per day varies with the cost of energy, electricity (20 kw per 1000 gal), natural gas and/or cogeneration and situs location.

A one-acre foot per day plant (326,000-gal/day) is approximately thirty feet in diameter and thirty feet in height. A ten-acre foot per day production plant is eighty to one hundred feet in diameter and a height of thirty feet. Larger production plants may be built in modules to produce any desired volume.

DESIRED VOLUME

Evolve would like to begin the Passarell process by providing a pipeline of water through Mauritania.

08-80807-Civ-RYSKAMP/VITUNAC

JS 44 (Rev. 2/08)

CIVIL COVER SHEET

FILED by MB D.C.
ELECTRONIC
July 18, 2008
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as re by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Ca**

I. (a) PLAINTIFFS

Jonathan Elliott, d.b.a "Evolve Talent Agency"

(b) County of Residence of First Listed Plaintiff Palm Beach
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

pro se

123 S. Longport Circle, Delray Beach, Fl 33444

DEFENDANTS

Church of Scientology, Int and Flag Servic

County of Residence of First Listed Defendant Palm Beach and others
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

Zuckerman Spaeder

08cv80807-KLR/AEV

(d) Check County Where Action Arose: ☐ MIAMI- DADE ☐ MONROE ☐ BROWARD ☑ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☑ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 610 Agriculture	☐ 422 Appeal 28 USC 158	☐ 400 State Reapportionment
☐ 120 Marine	☐ 310 Airplane	☐ 362 Personal Injury - Med. Malpractice	☐ 620 Other Food & Drug	☐ 423 Withdrawal 28 USC 157	☐ 410 Antitrust
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 365 Personal Injury - Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881		☐ 430 Banks and Banking
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability	☐ 630 Liquor Laws	PROPERTY RIGHTS	☐ 450 Commerce
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	☐ 640 R.R. & Truck	☐ 820 Copyrights	☐ 460 Deportation
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 650 Airline Regs.	☐ 830 Patent	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 660 Occupational Safety/Health	☐ 840 Trademark	☐ 480 Consumer Credit
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 690 Other		☐ 490 Cable/Sat TV
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	LABOR	SOCIAL SECURITY	☐ 810 Selective Service
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 710 Fair Labor Standards Act	☐ 861 HIA (1395ff)	☐ 850 Securities/Commodities/ Exchange
☐ 195 Contract Product Liability			☐ 720 Labor/Mgmt. Relations	☐ 862 Black Lung (923)	☐ 875 Customer Challenge 12 USC 3410
☐ 196 Franchise			☐ 730 Labor/Mgmt.Reporting & Disclosure Act	☐ 863 DIWC/DIWW (405(g))	☐ 890 Other Statutory Actions
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☐ 240 Torts to Land	☐ 444 Welfare	☐ 535 Death Penalty	☐ 462 Naturalization Application	☐ 871 IRS Third Party 26 USC 7609	☐ 895 Freedom of Information Act
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 540 Mandamus & Other	☐ 463 Habeas Corpus-Alien Detainee		☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	☐ 550 Civil Rights	☐ 465 Other Immigration Actions		☐ 950 Constitutionality of State Statutes
	☐ 440 Other Civil Rights	☐ 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed- (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):

a) Re-filed Case ☐ YES ☐ NO b) Related Cases ☑ YES ☐ NO 06-80424

JUDGE DOCKET NUMBER 06-08424 DC

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause **(Do not cite jurisdictional statutes unless diversity)**:

Fifth Amendment, Title 7 of Civil Rights Act & others

LENGTH OF TRIAL via 1 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ 7,200,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☑ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD S/ Jonathan Elliott, pro se

DATE 7/16/08

FOR OFFICE USE ONLY

AMOUNT 350 RECEIPT # 543714 IFP

07-11027, Jonathan Elliott v. Church of Scientology

US Circuit Court of Appeals - 11th Circuit

This case was retrieved on 03/06/2008

Header

Case Number: ***07-11027***
Date Filed: 03/08/2007
Date Full Case Retrieved: 03/06/2008
Status: Closed
Misc: (410) Other: Antitrust; Appeal

Participants

Litigants	Attorneys
Church of Scientology **Appellee** Address Not On File	Appellee Zuckerman, Spaeder 201 S BISCAYNE BLVD STE 900 MIAMI, FL 33131-4326 (305) 358-5000 Fax: (305) 579-9749 tmeeks@zuckerman.com No Briefing Information Found.
Jonathan Elliott **Appellant** 501 LINDELL BLVD DELRAY BEACH, FL 33444-1803 (561) 445-0122 No Briefing Information Found. Fees: Paid on 08.20.2007 D.B.A.: Evolve Talent Agency	Appellant 501 LINDELL BLVD DELRAY BEACH, FL 33444-1803 (561) 445-0122 No Briefing Information Found. Fees: Paid on 08.20.2007

Pending Motion

Date	Description
	No Pending Motions

Additional Case

Additional Case Information
Clerk: Norwood, Mildred
Clerk Phone: (404) 335-6185
Docket #: 06-80424-CV-LRJ
Judge: Linnea R. Johnson
Dkt Date: 04/25/2006
District: Florida-Southern
NOA Date: 02/28/2007
Office: SFL-West Palm Beach

Proceedings

Date	#	Proceeding Text	Details
03/09/2007		DKT2 (Docketing Notice) issued. To:Elliott,	

07-11027, Jonathan Elliott v. Church of Scientology

Date	#	Proceeding Text	Details
		Jonathan; c:Clarence Maddox; c:Thomas John Meeks	
03/09/2007		No Hearings to be Transcribed.	
03/16/2007		Appearance Form Submitted.	
03/23/2007		Civil Appeal Statement Form: N/R (ProSe)	
04/02/2007		Appellee's Mot. to Dism. for Lack of Appellate Juris.: (Atty: Thomas John Meeks)	
04/04/2007		CLK5 (Letter to district court re status of motion) issued. To:Clarence Maddox; c:Linnea R. Johnson	
04/04/2007		Appellant's opposition to appellee's motion to dismiss appeal: (ProSe)	
04/16/2007		DKT6A (Letter re IFP denied by district court) issued. To:Elliott, Jonathan; c:Clarence Maddox; c:Thomas John Meeks	
04/16/2007		Reply memorandum of appellee in support of its motion to dismiss appeal: (Atty: Thomas John Meeks)	
04/16/2007		DC Order: IFP Denied: (ProSe)	
04/26/2007		Motion to Proceed IFP: (ProSe)	
05/01/2007		CLK1 (Letter to district court) issued. To:Clarence Maddox	
05/15/2007		CLK1A (Letter to district court) issued. To:Clarence Maddox	
05/29/2007		CLK1A (Letter to district court) issued. To:Clarence Maddox	
06/06/2007		MOT2 (Notice of court action) issued. c:Clarence Maddox; c:Elliott, Jonathan; c:Thomas John Meeks	
06/06/2007		The Church of Scientology's motion to dismiss the appeal for lack of jurisdiction is DENIED. (RLA/JFD/EEC)	
06/13/2007		CLK1A (Letter to district court) issued. To:Clarence Maddox	
06/15/2007		Original Papers received: 2 Vols.	
07/25/2007		Appellant's motion for leave to proceed on appeal in forma pauperis is DENIED because the appeal is without arguable merit. See Pace v. Evans, 709 F.2d 1428, 1429 (11th Cir. 1983). (JFD)	
07/25/2007		MOT2 (Notice of court action) issued. To:Elliott, Jonathan; c:Clarence Maddox; c:Thomas John Meeks	
08/13/2007		Notice of Payment and Exhibit Filing; states that account is no longer active and payment cannot be remitted until such time as an	

07-11027, Jonathan Elliott v. Church of Scientology

Date	#	Proceeding Text	Details
		order is made.: (ProSe)	
08/13/2007		Notice of Filing Supplemental Damages; requests $10 billion dollars in damages: (ProSe)	
09/14/2007		On its own motion, the Court DISMISSES this appeal as FRIVOLOUS. See Eleventh Circuit Rule 42-4. (RLA/SHB/SM)	
09/14/2007		DIS-4 (Letter to district court enclosing court order) issued. To:Clarence Maddox; c:Elliott, Jonathan; c:Thomas John Meeks	
09/14/2007		CASE CLOSED	
10/04/2007		Motion for Reconsideration of Panel Order (3 CDs): (ProSe)	
10/29/2007		Appellant's "Motion to Vacate" is DENIED. (RLA/SHB/SM)	
10/29/2007		MOT2 (Notice of court action) issued. To:Elliott, Jonathan; c:Thomas John Meeks	
11/01/2007		MP-1 (Multi-Purpose letter) issued. Returned Motion to Strike Defenses and Motion for Summary Decision To:Elliott, Jonathan	
12/06/2007		Notice of Filing Certiorari: S. Ct. No. 07-7965 (ProSe)	
02/25/2008		Certiorari Denied: S. Ct. No. 07-11027 (ProSe)	

End of Document

No. 14-55283

In the United States Court of Appeals
for the Ninth Circuit

JONATHAN ELLIOTT,
PLAINTIFF/APPELLANT

v.

JANSSEN PHARMACEUTICALS, INC &
JOHNSON & JOHNSON
DEFENDANTS/APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT COURT
OF CALIFORNIA, NO. CV 13-00743

APPELLANT JONATHAN ELLIOTT'S OPENING BRIEF

JONATHAN ELLIOTT
5920 Comey Ave
Los Angeles, CA 90034
310-402-7702

No. 14-55283

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INTRODUCTION

People " have certain fundamental rights of autonomy that are not being respected."[1] Injuries were inflicted that could have been prevented. The negligence of the Defendants, their failure to account for the basic findings of several groups of experts is a fact of the case and a cause for relief. This appeal relates to strict liability, enterprise liability, negligence, breach of warranty and failure to warn claims regarding the product *Invega Sustenna.*

The Court erred in its failure to determine Defendant's liability for a dangerous product that produces only marginal benefits, accompanied by design defects in labeling. The fact is, changes to the dosages will reduce personal injuries. "The neuroleptic threshold theory raised the expectation that schizophrenic patients could be treated with an optimal, individual neuroleptic dosage, causing no side effects." *[The "neuroleptic threshold"--a review of the literature].* Abraham D, Kissling W, Lauter H.,Psychiatr Prax. 1996 May;23(3):abstract. {in German].

[1] Professor Maggie Little, *What is Bioethics*? , Georgetown, phlx101-01 Introduction to Bioethics, March 2014

ISSUES PRESENTED

This appeal of the district court's denial of Plaintiff Elliott's opposition to Summary Judgment and reconsideration raises serious questions.

1. Did the District Court established new standards of product liability law in California, thereby violating the Vth, IIXth and XIVth Amendments of the U.S. Constitution? (Plaintiff held to answer for an "otherwise infamous crime" without indictment and right to due process as well as cruel and unusual punishment)? [2] "*nun cupare possumus contionato nem quod loquatur ad populum*" Translated as: "At the present time (now), the spirit of the party befalls a certain property (availed) which speaks to the people." Pal. lat. 175, Hieronymus, Commentarius in Ecclesiasten, Lorsch, 1. Hälfte 9. Jh. Page: 3r.

"We have committed a greater crime, and for this crime there is no name"[3] Anthem, Ayn Rand, pg.1., 1938.

See, for example, Federal Rules of Evidence 406 ("habits). Plaintiff alleges the ruling was really an indictment of his cause célèbre addiction to marijuana. The ruling was incorrect. Plaintiff presently enjoys four years of sobriety, living free of drugs and alcohol. The ruling was unfair. The court failed to review the "asserted grounds of suspicion" consistent

[2] "Trust and respect now give way to fear, disdain, and suspicion. Moreover, this perception of fear and disdain is increasingly being translated into social policies that signal the shrinking of democratic public spheres, the hijacking of civic culture, and the increasing militarization of public space." *The Abandoned Generation: Democracy Beyond the Culture of Fear*, by Henry Giroux, 2003, pg. xvii

[3] Also note, in Ayn Rand's Anthem, there is a separate class of citizens called "they of the half-brain" who suffer neurological seizures.

with *United States v. Arvizu*, 534 U.S. 266 (2002), *United States v. Valdes-Vega* 9th Cir. Ct. App, 2012 (en banc).

Also, Plaintiff alleges that the conduct of the organization and its "routine practice" should have been the subject of closer scrutiny consistent with F.R.E 406, particularly as this applies to Defendants' failure to conduct long term studies and reduce proper indications of dosage for elderly patients.

2. What are the goals, objectives and policies of neuroleptic treatment with *Invega Sustenna*, balanced with the long range, general aims of the community?

3. Why should elderly patients (45 and over) remain susceptible to long term side effects when changes in can substantially eliminate those risks?

4. Does death exist?

5. How old is suffering?

6. Equal justice under law, is it?

JURISDICTION

Subject matter jurisdiction for this action arises under 28 U.S.C. §1332, which confers diversity jurisdiction to federal courts on matters arising under the laws of the United States.

This Court has appellate jurisdiction under 28 U.S.C. § 1291, which grants the United States Court of Appeals jurisdiction over appeals from final decision of the district courts.

The Appeal is from a District Court Order Granting Defendant's Motion for Summary Judgment and the entry of judgment against the Plaintiff entered on December 13, 2013 as well as a Motion for Reconsideration filed by Plaintiff on December 30, 2013 that the District Court denied in civil minutes on January 28, 2014. The Plaintiff-Appellant Jonathan Elliott filed a timely notice of appeal on February 21, 2014.

STATEMENT OF THE CASE

Plaintiff-Appellant Jonathan Elliott appeals from the District Court's order that established a statute of limitations on product liability claims. The sharp authority of the District Court is a cruel and unusual punishment. The ruling is a *de facto* enforcement of assisted suicide contrary to *Washington v. Glucksberg*, 521 U.S. 702 (1997) which unanimously held that a right to assistance in committing suicide was not protected by the Due Process Clause. The *Invega* drug study R092670-PSY-3001, Sect. 6.2.1 "Overview of adverse events" reports three subjects died during the study, two died in post-study and one died of suicide. Additionally, Subject 604062 was labelled an accident, "fall out a window." One other died of stroke another of heart attack and one "accidentally" ingested toxic

substances. (Defendant's Bates JJELICAE00000165). Even one incident of death related to a study should have triggered an immediate nationwide closure of the study and serious reconsideration of the study medicine.

The ruling rejects California's immunity from time considerations first standardized by the California Supreme Court in *Greenman v. Yuba Power Products, Inc.,* 59 Cal.2d 57 (1963).

In page two of the Court minutes denying the motion for reconsideration, the Court claims that " (California's discovery rule delays accrual "until the plaintiff either discovers or has reason to discover the existence of a claim") and "inquiry notice of the cause of action." [DOC 44, pg 2]

In the California Civil Jury Instructions #455 for the Statue of Limitations - delayed discovery, the directions for use read, in part, "The discovery rule provides that the accrual date of a cause of action is delayed until the plaintiff is aware of his or her injury **and its negligent cause**. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1109 [245 Cal.Rptr. 658, 751 P.2d 923].) The Plaintiff mailed notice to Defendants on November 12, 2012. The Plaintiff filed suit in January 2013. The consent decrees were not signed until August 30, 2012, three months before the Plaintiff filed his statement of claim.

Plaintiff alleges that the critical issue that decided in favor of treatment was the Defendants' representation of the genuine efficacy of the drug. In fact, Doctors and Plaintiff relied on purely false claims. The Federal Government's consent decrees and compliance agreements were not inked until 2012-2013. The statute of limitations should toll from there. . It would be nonsensical to allow the limitations period to expire before the cause of action accrues.

> "Originally experts believed the new drugs were more effective than the older antipsychotics against such symptoms of schizophrenia as apathy, social withdrawal and cognitive deficits. But several recent large randomized studies, like the landmark Catie trial, failed to show that the new antipsychotics were any more effective or better tolerated than the older drugs." *A Call for Caution On Anti-Psychotic Drugs*, Richard Friedman, M.D., New York Times Health Section, September 24, 2012.

A review of Plaintiff's Memorandum in Support of his opposition to Defendant's Motion for Summary Judgment, Doc 29, pg. 6-7 shows that the discovery of wrongdoing and negligence came about from the finding of the consent decrees that were signed in 36 states. California, the State where the Plaintiff resided at the time, was not included in the arrangement.[4]

These 2012 decrees put into question the efficacy of the drug *Invega Sustenna* and toll the discovery of negligence. Defendants were charged with

[4] "Put roughly and in its weakest form, the doctrine of the double effect asserts that it may, sometimes, be more permissible to bring about harm as a foreseen or foreseeable but unintended side effect of one's otherwise permissible activity than to bring about equally weighty harmful consequences as an intended means or end of one's activity." *Speech, Death and Double Effect*, Seana Shiffrin, NYU Law Review, Vol 78, No. 3, June 2003

making false claims. See the organizational routine or "habits" of the Defendants, the Nov. 4, 2013 case against the Defendants in *U.S. v. Janssen et al.*, E. Dist. Penn, Civ 04-1529, 2013, USDOJ Ex. 8 , Bates RISP-EDPA003488757; "Entirely separately, Janssen has been sitting on the trial results for a long time. Yet it has a moral and ethical responsibility to publish results quickly and in a way that they can be understood and makes clinical sense."

The Appeals Court is urged to review the January 14, 1999 FDA Risperdal warning letter regarding the Defendant's unbalanced reporting of efficacy, misrepresentation of tardive dyskinesia risks and failure to properly study the drug for the elderly. "Janssen is disseminating materials that state or imply that Risperdal has been determined to be safe and effective for the elderly population in particular. There is limited data on the use of Risperdal in the elderly, and the elderly population was not specifically studied in the clinical trials for Risperdal." *U.S. v. Janssen et al.*, E. Dist. Penn, Civ 04-1529, 2013, USDOJ Ex.4. pg. 1.

Defendants organizational "routine" is consistent in the studies of *Invega* and *Risperdal*. In fact, as early as October 14, 1994 Defendants were warned

"Additional data from clinical trials would be required to support the promotion of geriatric use of Risperdal." *U.S. v. Janssen et al.*, E. Dist. Penn, Civ 04-1529, 2013, USDOJ, Ex. 1., pg.2

The Plaintiff did not make finding of the Consent Decrees filed in August 2012 until after the Statement of Claim was sent to Defendants in November of 2012. Only two months transpired from the publishing of the negligent causes and the filing of the complaint. Notification after discovery has been codified in "The Patriot Act", HR 3162, Sect. 213, (2001).

The Appeals Court must also consider that evidence collected from online sources during the discovery process was altered, corrupted, maliciously falsified and continually fabricated – thus creating spectacular obstacles in discovery.

"The general rule for defining the accrual of a cause of action sets the date as the time when the cause of action is complete with all of its elements." *Rivas v. Safety-Kleen Corp.* (2002) 98 Cal. App. 4th 218 [119 Cal. Rptr. 2d 503].

The Defendants, after paying out billions to the federal government to stop investigations into the drug, knowing of the issues of biased efficacy, didn't even so much as send a letter to the treating doctor's warning them of possible failures. "The conduct at issue in this case jeopardized the health and safety of patients and damaged the public trust," said Attorney General Eric Holder, Dept. of Justice Press Release, Monday, Nov 4, 2013. The claims made by the Defendants to

Doctors were never even corrected. Is it breach of duty, fraudulent concealment or depraved indifference? The District Court failed to see this. The statute of limitations didn't even exist in California and the constitutional rights of due process, equal protection, and the quality of life formalized within the 14th amendment were taken off the table.

> "Tardive dyskinesia (TD) is probably the most serious side effect of long-term neuroleptic exposure. The severity of TD resides in its potentially irreversible nature and in its medical and psycho-social complications (Yassa and Jones 1985). *Basal Ganglia abnormalities in Tardive Dyskinesia*, Dalgalarrondo, P., Gattaz, W, Eur Arch Psychiatry Clin Neurosci (1994) 244:273.

The Plaintiff has just recently discovered information concerning the bias of efficacy studies that contributed to Plaintiff's decision to accept Invega treatment.

> "The company also drafted a scientific abstract on Risperdal for Dr. Biederman to sign — as if he were the author — before it was presented at a professional meeting. And it sought his advice on how to handle the uncomfortable fact, not mentioned in the abstract, that children given placebos, not just those given Risperdal, also improved significantly." *Expert or Schill*, November 30, 2008, New York Times.

Risperdal is the original formula of the medication that was distilled to create *Invega Sustenna*. Invega is the primary active metabolite of Risperdal (Risperideone).

> "On July 2, 2011, the Harvard Crimson reported that nationally known child psychiatrists Joseph Biederman, M.D., Timothy Wilens, M.D., and Thomas Spencer, M.D. were found to have violated conflict of interest policies of Harvard Medical School and the Massachusetts General Hospital." *Child Bipolar Disorder Imperiled by Conflict of Interest*, Psychology Today blog, Dr. Stuart L. Kaplan, July 11, 2011

The effects of tardive dyskinesia on the youth is also a matter of concern.

> "A national study conducted by PolicyLab at The Children's Hospital of Philadelphia shows an increased use of powerful antipsychotic drugs to treat publicly insured children over the last decade. The study found a 62 percent increase in the number of Medicaid-enrolled children ages 3 to 18 taking antipsychotics, researching a total of 354,000 children by 2007." *Study Finds Increase in Antipsychotic Use*, Discovery and Innovation, 2014.

> "Children treated with antipsychotic drugs might experience a significant risk of dyskinesia even when treated only with atypical antipsychotics." *Tardive dyskinesia in children treated with atypical antipsychotic medications*. Wonodi, I et al, (2007, Mov. Disord., 22: 1777–1782. doi: 10.1002/mds.21618

> Conditions may be worse, including a lifetime of movement disorder

symptoms for babies exposed to antipsychotics including Invega Sustenna.

> "The period just after fertilization is important to the victim's future." "Matriculation", Bob Kaufman, *Solitudes Crowded with Loneliness*, New Directions, pg.41, 1959.

> "Only 19% of infants prenatally exposed to an antipsychotic demonstrated

normal neuromotor performance." Johnson KC, LaPrairie JL, Brennan PA, Stowe ZN, Newport D. Prenatal Antipsychotic Exposure and Neuromotor Performance During Infancy. *Arch Gen Psychiatry.* 2012;69(8):787-794. Certainly that is an interesting and optimistic way to say 81% of the children were afflicted.

The Defendant's data in the warning package asserts that:

"INVEGA® SUSTENNA ® should be used during pregnancy only if the potential benefits justify the potential risk to fetus. (Invega package, Section 8.1, "Pregnancy: Risk Summary" pg.30).

Can the Defendant's show there would actually be a case where the risks would be outweighed by benefits?

The "mild form" tongue and jaw movements of T.D. the Doctor recognizes as early as July 2010 are not the subject matter of the complaint. The complaint demands laws against regular dosages for the elderly (45 and over) because of the prevalence of the *severe* form, not recognized until February 2012. See Kane and Smith 1982; Smith and Baldessarini 1980, below on pg.26). Lower dosages for the elderly are required. This fact proven by twenty years of research concluding that lower dosages are optimal. Lower dosage, the fitting, suitable and appropriate one, is preferable, and changes in the prescribing indications in the package would have altered the Doctors prescribing habits.

In *Greenman*, the statute of limitations is ruled out, in line with traditional notions of fair play for the general public unwary of the specifics of legal procedure. The *Greenman* ruling is an indispensable tool devised to protect the majority of citizens caught unaware.

Greenman was established to preserve and protect the fundamental rights of Plaintiff's. This was blatantly disregarded by the District Court.

> "I understand that you feel that you've had an injury, but the basis for my ruling is simply applying the statutes of limitations, which unfortunately means that your claim is barred because it was filed too late." Honorable Judge Gee, Motion Hearing, 12/13/13, pgs.10-11: 24-25,1-2.

Greenman is mandatory for the protection of the unwary Plaintiff acting on their own accord or in the process of seeking legal counsel long after they are injured because they fail to study the letter of the law.

It should be the spirit of the law that the public must be protected in product liability matters material to personal injuries.

> "The notice requirement of section 1769, however, is not an appropriate one for the court to adopt in actions by injured consumers against manufacturers with whom they have not dealt. (*La Hue v. Coca- Cola Bottling, Inc.*, 50 Wn.2d 645 [314 P.2d 421, 422]; *Chapman v. Brown*, 198 F. Supp. 78, 85, affd. *Brown v. Chapman*, 304 F. 2d 149.) [4] "As between the immediate parties to the sale [the notice requirement] is a sound commercial rule, designed to protect the seller against unduly delayed claims for damages. As applied to personal injuries, and notice to a remote seller, it becomes a booby-trap for the unwary. The injured consumer is seldom 'steeped in the business practice which justifies the rule,' [James, *Product Liability*, 34 Texas L. Rev. 44, 192, 197] and at least until he has had legal advice it will not occur to him to give notice to one with whom he has had no dealings." (Prosser, *Strict Liability to the Consumer*, 69 Yale L. J. 1099, 1130, footnotes omitted.)" *Greenman v. Yuba Power Products, Inc.,* 59 Cal.2d 57 (1963)

FACTS

A. The Court should consider the ruling in Greenman regarding the statute of limitations as a thing already decided. Res judicata should preclude any claim that discovery in product liability and design defect is untimely. The community at large will continue to be susceptible to personal injuries that are altogether cruel, unusual.

1. Defendants were aware or should have been aware that lower dosages were necessary and failed to take into account the instructions of their own founder as well as Dr. Haase, Dr. Jeste, Dr. Kane and others.

> "The clinically relevant result was that very small doses had to be chosen, since at higher dose levels the motor inhibition became too pronounced and the force exerted was so reduced (ergograph), that the motor coordination of the patients as a whole became worse." *The Action of Neuroleptic Drugs*, H.J. Haase and **P.A.J Janssen**, Elsevier, 1985 pg. 138.

2. Then, after Plaintiff warned of the dosage requirements, the Defendants failed to make proper changes in the initiation procedures of the drug. This type of misconduct demands equitable relief in line with the enterprises' liability, the full cost to society, the social undesirability of the side effects, the protection of the public and the prevention of future treatment regimens that may comport with the untenable standards the District Court has since enforced. In gaining summary judgment, the Defendants should be held *even more* accountable for compensatory and punitive damages intended to invoke greater

degrees of public protection. The Defendants have succeeded in subordinating the public health to corporate interest and this clearly undermines the public right to treatment based in properly informed consent. "For the mass of goods is still produced in response to individual choices rather than to executive fiat." *Some Thoughts on Risk Distributions and the Law of Torts*, Guido Calabresi, Yale Law Journal, Vol 70, No. 4, 1961, pg. 532.

B. The Defendant's failed to rely on scientific evidence that sufficient cause exists to dictate lower dosages to patients 45 and over. Scientific fact in regards to tardive dyskinesia proofs beyond a doubt that risk of tardive dyskinesia is 52% in the second year of treatment for patients forty five and older. The risk increases to 60% in the third year. The same study, by Dr. Jeste, et.al confirms the discovery of Dr. Janssen and confirms that:

> "Use of higher amounts of neuroleptics, particularly high-potency ones, should be avoided in older patients, patients with alcohol/dependence, or patients with a subtle movement disorder at baseline; these patients are at a higher risk of developing TD." *Risk of Tardive Dyskinesia in Older Patients*, Jeste, DV, Caliguri, MP, Paulsen, JS, Heaton, RK, Lacro, JP, Harris, MJ, Bailey, A, Fell, RL, McAdams, LA, Archives of General Psychiatry, September 1985, Volume 52, pg.756

C. Regarding elderly dosages, the Court must require as proof demands a "Change Being Effected" supplement consistent with C.F.R's Final Rule

on C.B.E labelling. Otherwise, the public interest is in continual danger. This unreasonable danger to society can be remedied by a simple label change requiring lower dosages.[5] The District Court failed to consider the gravity of the danger, the likelihood the dangers will occur and the mechanical feasibility of a safer alternative design. The Defendant can be found liable even if it meets ordinary consumer expectations if in hindsight the design embodies "excessive preventable danger." *Barker v. Lull Engineering Co* (1978) 20 Cal.3d 413 [143 Cal.Rptr. 225, 573 P.2d 443, 96 A.L.R.3d 1]. As Dr. Jeste suggests, lower dosage indications would have changed the actions of the prescribing psychopharmocologists and prevented patient injury. Without changes in labeling, the actions of doctors become unconsciously mechanical, following uniformly along with the instructions, bringing about cruel and unusual side effects.

D. A "manifest injustice" consistent with Federal Rule of Civil Procedure 59(e)(3) exists. Defendants must change the dosage requirements for patients 45 and over. "The more serious the anticipated harm, the greater the duty to warn." *See Braniff Airways, Inc. v Curtiss-Wright Corp* 411 F. 2d 451 (2d Cir. 1969*) on rehearing*, 424 F. 2d 427 (2d Cir. 1970); *Davis v. Wyeth Laboratories, Inc.*, 399 F 2d 121 (9th Cir. 1968).

[5] To prevail in a design defect case plaintiff must establish proof that a reasonable alternative design exists or could have been created and that failing to utilize the reasonable alternative design rendered the product not reasonably safe. RESTATEMENT(THIRD) OF TORTS:PRODUCTS LIABILITY § 2(b) (1998).

E. An inherent design defect in the manufacturing of the packaging recommendations for patients and learned intermediaries exists. Elderly patients are more susceptible to severe forms of tardive dyskinesia at regular dosage levels. "Starting and maintenance doses of the atypical antipsychotics should generally be lower in older than in younger adults." *Tardive Dyskinesia in Older Patients*, Dr. D.V. Jeste, J. Clin. Psychiatry; 61 Suppl 4:27.

Defendants-Appellees Janssen Pharmaceuticals, Inc and Johnson & Johnson have continued to disregard low dosage requirements for the elderly irrespective of the guidance demonstrated by the Plaintiff. The *Invega Sustenna* instructions and warnings offer no recommendation to the patients over forty five. It is a material fact that the prescribing physicians depended on the package insertion for instructions when making their treatment decisions and that a strong signal to lower dosages would have altered the course of events for the Plaintiff and prevented unconscionable side effects.

1. THERE ARE MAJOR DEFECTS IN THE PRODUCT

In a description of the two pooled 13 week studies (the Plaintiff argued for longer term ones) the following data appeared during discovery:

"The percentages of withdrawal subjects were 63%, 50%, 45%, and 60% from placebo, 50 mg eq., 100 mg eq., and 150 mg eq, respectively. Majority of the randomized subjects from each group left the study due to lack of efficacy." Johnson & Johnson Application 22-264, Center For Drug Evaluation and Research, pg.8 , 25 October, 2007

In Section 1.3. Statistical Issues and Findings:

> "Although it is well known that dropout rates in psychiatric trials are relatively higher as compared to dropout rates in other therapeutic trials, a general question might be what percentage of dropouts is acceptable for a valid statistical inference on the efficacy of a study drug in psychiatric trials. For future NDA industries on an acceptable percentage reviews of psychiatric drugs, it is important to have a consensus between the agency and of dropouts regardless of using advanced statistical method in dealing with missing data." CDER, supra, pg. 4.

The final sentence of the application (pg.32) concludes;

> "Although I sign off this, I found that in
> Section 5.1 and 5.2 the conclusions about secondary
> endpoints were not fixed."

F. The District Court is in clear error. It standardizes the statute of limitations regarding personal injury in product liability. *Greenman v. Yuba Power Products, Inc.,* 59 Cal.2d 57 (1963) protects the public by eliminating such statutes. It is the spirit of the law, how it should form to prevent injury to a community that is substantive. To obey the letter of the law and ignore the spirit of the law is to abandon the *intent* of the creators of the law.

G. The immunity offered by Comment K requires that the product be accompanied by "proper" instructions and warnings. The recommendations

in the packaging for the elderly are insufficient, inadequate and create unreasonable danger to the consumer. The package insertion makes no lower dosage allowances for the elderly despite the fact that research has continually demonstrated the need for lower dosages. Therefore, the warning is improper and cannot be immune from liability under K.

H. The Court has the right to protect the justified expectations of safety. Apply to the product – a dosage administration instruction consistent with scientific observation. The Defendants are in reckless disregard of the dangers to the elderly patients. "Side effects of antipsychotic medications are particularly problematic in elderly patients, who experience many age-related changes that may exacerbate medication side effects." *Side Effects of Anti-Psychotics in the Elderly*, Dr. P.S Masand, J Clin Psychiatry, 2000; Suppl 8:43.

I. The Defendants simply failed to conduct adequate studies on the significantly elderly populations over age 45. The *Invega Sustenna* packaging is based on thirteen week clinical studies but patients are expected to take the medication for the duration of a lifetime. Five year clinical studies should have taken place before the introduction of the anti-psychotic medication.

J. Anosgnosia ("lack of insight") or a lack of self-awareness about changes in mental-function and behavior is believed to be the single biggest reason

why schizophrenics fail to take medications.[6] Because the psychopharmacologist simply notated his observation of tardive dyskinesia in July 2010 does not mean that the Plaintiff had acknowledged the affliction. "Yes, asognosia of TD is quite common." (Dr. Tremeau, email to Plaintiff, May 8, 2014)

> "Lack of insight into psychiatric symptoms and agnosia of tardive dyskinesia (TD) are two striking phenomena observed in schizophrenia that have only recently been studied rigorously and remain poorly understood…Unawareness of TD was highly correlated with poor insight into psychiatric symptoms…" *Agnosia of Tardive Dyskinesia in Schizophrenia*, Fabien Tremeau, M.D., Xavier Amador, Ph.D., Dolores Malaspina, M.D., Yvan Amodt, M.S., Raymond Goetz, Ph.D., Jack M. Gorman, M.D, 150th Annual Meeting of the American Psychiatric Association, 1997, pg. 68

Failure to take medications is typical of the schizophrenia condition and proof of a patients' unawareness of their condition. This correlates with a patients' inability to understand TD. Defendant's Medical records from Dr. Benarroche (5/29/08) substantiate a diagnosis of agnosia."Unclear if he really takes his anti-psychotic meds."(Defendant's Bates Stamp: JE2:B&Arev:0036). In fact, it was the Plaintiff's consistent refusal of medications that led to the determination that an injection was necessary.

K. After the Plaintiff filed the original complaint, he began to suffer an even more severe side effect – dysphagia. It is often very difficult to diagnose

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[6] Oliver Sacks, in his book *The Man Who Mistook His Wife for a Hat (1985)*, noted this problem: "It is not only difficult, it is impossible for patients with certain right-hemisphere syndromes to know their own problems.... And it is singularly difficult, for even the most sensitive observer, to picture the inner state, the 'situation' of such patients, for this is almost unimaginably remote from anything he himself has ever known." Pg.5.

because patients frequently fail to relate the condition to their treating clinicians.

"Dysphagia in TD can be isolated or in combination with other bucco-lingual-masticatory features. Isolated dysphagia is rare, but it can be life-threatening also." *Dysphagia due to tardive dyskinesia,* Pookala S. Bhat, P. K. Pardal and M. Diwakar, Ind Psychiatry J. 2010 Jul-Dec; 19(2): pg.135.

An August 16, 2012 "Choking/Aspiration Alert" from Marcia Fazio, Deputy Commissioner of the Office of Mental Health in Albany New York reviewed four sudden deaths of men 51-63 years old, each choked to death. Marcia

> Fazio wrote factors included "…adverse effects of medications (e.g. dysphagia, dry mouth, excessive salivation, tardive dyskinesia, sedation), poor definition and limited awareness and insight regarding swallowing difficulties and eating behaviors."

"It should be emphasized that 'esophageal dyskinesia' associated with lingual dyskinesia is a potentially fatal adverse reaction to antipsychotic therapy." *Antipsychotic induced life threatening esophageal dyskinesia,* Horiguchi J, Shingu T, Hayashi T, Kagaya A, Yamawaki S, Horikawa Y, et al. Int Clin Psychopharmacol. 1999;14: pg.123.

> "A 1993 study in a Paris hospital involved 10 patients suffering from 'general dyskinesias,' six of which were tardive dyskinesia patients diagnosed due to the side effects of neuroleptic (psychoactive) medications…In addition, all but two of the subjects had 'intermittent partial obstruction of the glottis due to abnormal adduction [contraction] of the vocal chords.' Interestingly, these uncontrolled movements of the glottis (the combination of the vocal folds and the space between the folds) were irregular and the patients were not aware of their occurrence." Source:

http://www.tardivedyskinesia.com/symptoms/vocalizations-breathing-swallowing.php (last cited May 6, 2014) citing: *Abnormal movements of the larynx. Diagnostic approach and therapeutic perspectives.* Angelard B1, Feve A, Moine A, Fichaux P, Guillard A, Lacau St Guily J., Ann Otolaryngol Chir Cervicofac. 1993;110(3):125-8.

L. The Plaintiff should be allowed the same latitude afforded the Federal Government in delayed discovery. See "The Patriot Act" HR 3162 Sect. 213 (2001) "Authority for delaying notice..." and how "immediate notification" is no longer necessary. This allows the government to conduct discovery for an unlimited period of time, without scope or limitation, and then notify citizens after.

M. The District Court should have addressed the question of time limitation to a jury.

N. The question of whether or not a labeling change is necessary is still inherent.

O. The Court should "apply its own statute of limitations permitting the claim unless: maintenance of the claim would serve no substantial interest of the forum." Second Restatement of Torts § 142. Statute Of Limitations.

SUMMARY OF ARGUMENT

1) The elderly require 2) lower dosages or face 3) severe forms of injury.

The claimant must have knowledge of some "wrongful cause" of the

Defendants actions. See *Fox v. Ethicon Endo- Surgery* (2005) 35 Cal.4th 797 [27 Cal.Rptr.3d 661, 110 P.3d 803).

The statute begins to accrue when the facts that contributed to the negligence of the manufacturer are discovered. That is why it is called delayed discovery. Discovery of wrongdoing did not occur until the publication of the consent decrees in 2012 and the Federal case settlement on November 4, 2013. The statute of limitation should not begin to toll until those discoveries were published.

The district court erred as a matter of law by failing to recognize the clear instructions directed to the courts in causes of action of personal injury as expressed in *Greenman v. Yuba Power Products, Inc.* (1963). As Greenman suggests, the Plaintiff/Appellant simply had no knowledge of the particulars of law and should not be punished because *Greenman* mandates immunity from limitations The Plaintiff's status as a minority also calls into question the equality under the law.

The fact that dyskinesia is mentioned to be irreversible is not enough to prevent the injury in fact. *Invega Sustenna* is a depot injection drug and it is the method of last resort for professionals. Plaintiff recently received a letter from a mother distraught by her daughter's condition of tardive dyskinesia. She had the

same complaint as Plaintiff did. She could not sue because the attorney's claimed she had been "warned". What the court fails to understand is that when push came to shove, patients are led to believe in the efficacy of the drug and the benefits are touted as being greater than the risks. "It is also essential to appreciate, as Salzman (1987) concludes, that the overall therapeutic efficacy of these drugs is modest rather than striking." *Tardive Dyskinesia, A Task Force Report of the American Psychiatric Association*, Dr. Kane, Jest, Casey, et.al., 1992, pg.142.

> "If the nature of the thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger" Prosser quotes *Machperson v. Buick Motor Co*, 217 N.Y. 382, 389. 111 N.E. 1050, 1053 (1916)
>
> Then, even in the face of danger, choice here does not exist.
>
> "Whatever may be reasonable from the point of view of the [13 Cal. 4th 1109] manufacturer, the user of the product must be given the option either to refrain from using the product at all or to use it in such a way as to minimize the degree of danger." *Carlin v. Superior Court (Upjohn Co.)* (1996)13 Cal. 4th 1104 [56 Cal. Rptr. 2d 162, 920 P.2d 1347] citing *Anderson v. Owens-Corning Fiberglas Corp.* (1993) 53 Cal. 3d 987 [281 Cal.Rptr. 528, 810 P.2d 549].

The Plaintiff-Appellant, like so many of the unwary public, progressed into a conundrum, either take the medication or face institutionalization. So the "warning" the district court relies on is meaningless. False claims made of the drug's efficacy combined with the lack of lower dosages for the elderly are

material facts in this case. False efficacy reports are designed to enforce choice of the product. *Invega Sustenna* is touted as a depot injection drug particularly useful for patients who have refused alternative medications.

See *Riggins v. Nevada*, 504 U.S. 127 (1992) (mentally ill forced to take anti-psychotics) *Washington v. Harper*, 494 U.S. 210 (1990) (involuntary use of anti-psychotics) *Rogers v. Okin*, 48 L.W. 2328, 478 F. Supp. 1342 (10/29/79) (right to refuse anti-psychotic drugs on the constitutional protection of an individual's right to privacy) *K. K. B., In re* 1980 OK 7 609 P.2d 747 (liberty includes the freedom to decide about one's own health) "In *Rennie v. Klein*, 653 F.2d 836, 843-44 (3d Cir.1981), remanded, 458 U.S. 1119, 102 S.Ct. 3506, 73 L.Ed.2d 1381 (1982), on remand, 720 F.2d 266 (3d Cir.1983), we recognized that persons who have been involuntarily committed to a mental institution have a qualified right to refuse anti-psychotic medication. The right is protected substantively by the Due Process clause of the Fourteenth Amendment. It is derived from each person's fundamental right to be free from unjustified intrusions on personal security. *Rennie v. Klein*, 653 F.2d at 844." as cited in *White v. Napoleon*, 897 F.2d 103 (3rd Cir. 1990). Plaintiff was "persuaded" to take the first injection of *Invega Sustenna*. on. 10/23/09. The Ninth Circuit Court of Appeals heard arguments three weeks earlier regarding *U.S v. Ruiz-Gaxiola*, 623 F. 3d 684, 2010. Forced medication was at that time, topical.

Also, the Plaintiff/Appellant was led to believe by ordinarily available consumer knowledge that the *Invega Sustenna* was "state of the art", the newest, best drug on the market, and that any alternative could cause even more extensive injury. The only adequate warning that could have prevented the onset of symptoms are lower dosage requirements suggested by Dr. Janssen, Dr. Jeste, the Dr. Haase and others. The Defendants fail to design labeling in accordance with the research and recommendations of experts. Whether it is reckless disregard, gross negligence, incompetence or failure on the part of the Defendants, the research regarding lower dosages for older patients is substantive proof to establish grounds for damages. Defendants do not deny their failure to fulfill the conditions established by Dr. Jeste. No part of the Defendants' pleading clearly or unequivocally states why the Defendant's ignored a proper interpretation of the evidence relevant to lower dosages presented by expert professional researchers.

The Defendant's argue that the Plaintiff took a range of other drugs previous to treatment. An unpreserved claim is: if the Defendant's determined drugs accumulate in the body and cause injury, Defendants are negligent for not recommending lower dosages for patients engaged in previous treatments. [7]

Finally, it is not the "mild" form of tardive dyskinesia recognized early that is the subject matter of the complaint. It is the "severe" form of tardive

[7] "In the case of neuroleptics that accumulate in the body it is even necessary to reduce the dose immediately.." The Action of Neuroleptics Drugs, Dr. Haase and Dr. Janssen, 1985, pg.4.

dyskinesia caused by failed warnings/instructions to the elderly that the court must be concerned with. The Courts must consider there are past precedents for "classifying injuries as either substantial or minor." *Knowles v. Mantua Township*, N.J. Sup. Ct., 2003. A lower dosage requirement for the elderly would lower the rate of tardive dyskinesia in its severe form. The mild form indicated as early as July 2010 was considered tolerable by the Plaintiff, but the severe form established in Jan-February 2012 seriously affected his quality of life.

> "In numerous studies, age has been shown to be clearly associated with the prevalence of tardive dyskinesia. Extensive reviews of the topic (Kane and Smith 1982; Smith and Baldessarini 1980) have concluded that increasing age remains the most consistently implicated factor for the risk of development of tardive dyskinesia as ***well developing more severe and persistent forms*** of the disorder." *Tardive Dyskinesia, A Task Force Report of the American Psychiatric Association*, Dr. Kane, Dr. Jeste, Dr. Casey, et.al., 1992, pg 71.

Empirical evidence records severe forms of dyskinesia caused to the elderly by lack of dosage restrictions. The Defendant's, as *scienters* or *insciens,* of past research, knowing neuroleptics to be dangerous to the elderly, or with reason to know of these dangerous propensities, are liable "without wrongful intent or negligence, for damage to others resulting from such a propensity."

Hillman v. Garcia-Ruby, 44 Cal.2d 625, 626 (1955).

> "As people age, less of all medication is required because of the physiologic changes taking place in the body (Strome & Howell, 1991). In the elderly, the function of absorption, metabolization, and elimination of neuroleptics are impaired. Absorption is less impaired than metabolization and elimination; thus, higher blood levels of drugs occur in the elderly. Higher blood drug levels increase the chance of having adverse side effects and adverse drug interactions. For these reasons, special care is needed when prescribing neuroleptic medication for all elderly including those with serious and persistent mental illness. Regular medication assessment with reduction in drug dosage when feasible and routine screening for side effects is essential." Smith, Shirlee B., "*Prevalence of tardive dyskinesia in the elderly after 20 years on neuroleptics*" (1996) . Master's Theses. Paper 1264, pg.16

The Defendant's either knew or should have known of the prevalence of the injury in the elderly. The Defendant's simply designed a defective instructional set. In the Harvard Mental Health Letter, their own expert, Dr. Kane (1992) writes that "higher doses of drugs probably raise the risk of TD." Material facts effect the outcome of a case. 1) The necessity of lower doses for the 2) elderly otherwise affected by 3) severe forms of TD are indisputable material facts. Defendants were warned of this situation by the Department of Health and Human Services:

> "In healthy elderly subjects, the clearance of both risperidone and its active metabolite was decreased, and the elimination half-lives prolonged… Risperdal should be used cautiously in healthy elderly individuals because of the potential for decreased clearance of the drug, potential drug interactions." *U.S. v. Janssen et al.*, E. Dist. Penn, Civ 04-1529, 2013,USDOJ Ex.4. pg.2

The Defendant's did not include any five year studies in their package insert or FDA application. Inference can be drawn from available research that including five year results would have caused the FDA to reject the application.

> "Sweet and Pollock have noted that controlled clinical studies of atypical antipsychotics in elderly patients are urgently needed so that age-related changes in pharmacokinetics and the risks of drug-drug interactions do not have to be extrapolated from case series and studies of young patients with schizophrenia." *Impact of Antipsychotics on Geriatric Patients: Efficacy, Dosing, and Compliance*, Gerald A. Maguire, Prim Care Companion, J Clin Psychiatry. 2000 October; 2(5): 167.

In Defendants' Psy-3007 study last submitted November 2010, entitled "Effectiveness and Safety of 3 Fixed Doses (25 mg eq., 100 mg eq., and 150 mg eq.) of Paliperidone Palmitate in Patients With Schizophrenia", there were 652 patients tested. In the 25mg, 100 mg, 150 mg groups there were 160, 165 and 163 patients respectively. In the <65 group, there were 0,1, and 2 patients respectively.

Sample bias is a classic and dangerous mistake. The Defendant's simply used a measure which neglects accurate information regarding geriatric cohorts.

The Defendant's base their claims on that sample but it is an incomplete look at the elderly population.

> "The randomized clinical trial, long the gold standard of medical research, supposedly provides the most reliable data regarding which drugs, devices and procedures prove effective on real patients and which don't. But when the people enrolled in the trial are quite different from those who will actually use the drug or device or undergo the procedure, the data are far less reliable.
>
> Yet it happens, startlingly often, with old people. They're not well presented in clinical trials, a fact that undermines their doctors' best efforts at providing treatment." *Clinical Trials Neglect the Elderly*, by Paula Span, August 19, 2011, NY Times, NewOldAge blog.

STANDARD OF REVIEW

First, the conversations, notes and records of the Doctors were privileged communications the Plaintiff offered in good faith so that the Defendants could better understand the defects of their designs. It was an abuse of discretion for the District Court to rely on them as a method of ruling out the Plaintiff's complaint. The Court should protect a Plaintiff's rights and reject the nullification of a cause of action by self-incrimination. This right should derive in civil matters from the spirit of the law in the fifth amendment. Finally, the evidence is circumstantial and unsubstantiated, no witness can corroborate its authenticity; as it is, the evidence could be falsified or fabricated. No one can authenticate the time, date and place of the notations. Documents incorporated by reference must be "undisputed" *Horlsley v. Feldt*, 304 F. 3d at 1134 (citing *Harris v. Ivax*, 182 F 3d

799, 802 n.2(11th Cir.1999) (defining "undisputed" as meaning "that the authenticity of the document is not challenged.")).

The District Court failed to recognize and appreciate the effect of the drug on the Plaintiff during the discovery process. Having tardive dyskinesia makes it difficult to read, difficult to study and the drug *Invega Sustenna* can cause cognitive impairment, sedation and dizziness. It's not too late.

> "In animals, the most striking behavioural effects produced by neuroleptic drugs are very similar to those described in man: at low dose levels operant behavior as a whole tends to disappear, while spinal reflexes remain normal: exploratory behavior decreases, learned conditioned behavioural responses are blocked; the animal responds less, or more slowly, to a variety of visual, tactile or auditory environmental stimuli." *The Action of Neuroleptic Drugs*, Dr. H.J. Haase and Dr. P.A.J Janssen, *1985,* pg.288

"Preserving the dignity of our seniors as they succumb to aging is the most important thing, we as children can offer our parents." Family ADVICE, *Treat Elderly Parents with* Dignity, by Cindy K. Sproles, Christian Broadcasting Network, February 15,2013." The Appeals Court cannot take too lightly that the District Court ruling puts the senior class in continued imminent danger. There is a conspiracy of silence running through the Court marked by the failure to hear the motion for reconsideration.

> "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence." *The People of the State of California v. Lawrence Ferlinghetti*, S.F. Municipal Ct., 1957

Greenman should have accommodated the Plaintiff and provided qualified immunity from the time constraints of the statute of limitation. Instead it did the opposite.

While the order clings to the preservation of law, it abandons *Greenman* and sets a dangerous precedent where the public has no recourse and are stripped of their civil rights in cases of permanent injury where the groundwork was once laid for their defense. It is a trend that the Nation cannot afford. The District Court dwells on factors that are insignificant and irrelevant. The Court simply failed to notice that the product may have been rushed into the market without adequate testing and that faulty dosage instructions are the cause of permanent neurological diseases. It's not too late.

For the most part, people who are challenged by tardive dyskinesia are an ethnically diverse lot that share the same shortcomings in common. They are psychologically challenged individuals to whom quick reasoning is vastly more difficult than the average person. They are often faced with the inability to articulate their feelings into words because their minds are racked with confusions. To place limitations on time on schizophrenics is a distortion of the integrity of the court's basic interest in maintaining the rights of those who cannot help themselves because

of pre-existing conditions and the incidental catastrophe of serious adverse events causing permanent neurological disorder. Their lives move from rudimentary to complex.. Schizophrenics suffer dissociation, emotional irritability and emotional lability. Tardive dyskinesia destroys the quality of life. Schizophrenics can typically suffer disorientation. Treatment with anti-psychotics is a cause of cognitive brain impairment. as well.

"Instead of offering the promise of reducing violence, all psychiatric drugs carry the potential risk of driving the individual into violent madness." *The Real "Mental Health Lessons" from Virginia Tech*, Dr. Peter Breggin, Huffington Post, April 19, 2007.

The schizophrenic typically lives through the day experiencing agitation, sonic or auditory and visual disturbances, internal and external conflicts that are treated by neuroleptic drugs which cause significant effects of sedation, making concentration difficult. Thus, the practical aspects of cognitive function necessary to formulate legal theory is met with critical obstacles due to both the treatment and disease. The neuroleptic action is accompanied by a vegetative symptom that diminishes ability and increases agitation, a further obstacle in discovery process.

. The tranquilizer effect diminishes productivity and impairs the process of work (discovery).

> "In addition, the body is, in principle, objectively more stressed by drug-induced side effects as the applied dose (see milligram values) of a neuroleptic drug increases" *The Action of Neuroleptic Drugs*, by H.J Haase and P.A.J Janssen, 1985, pg 26.

Living with tardive dyskinesia, the soul becomes the eternal prisoner of the body. In reality, the motion of the body and the causes of the brain are ignominiously drawn apart. The distress leads to social isolation and confines the patient to a life of loneliness and stigmatization.

Plaintiff suffers frequent, continuous and random muscle movements that challenge the Plaintiff with emotional feelings of inadequacy charged by periods of intense hostility, rage and violent thoughts that only contribute to the loneliness and horror of the disease. The symptoms can increase with age.

Tardive dyskinesia makes the discovery of a life partner a daunting and formidable task.

> "Social rejection increases anger, anxiety, depression, jealousy and sadness. It reduces performance on difficult intellectual tasks, and can also contribute to aggression and poor impulse control, as DeWall explains in a recent review (*Current Directions in Psychological Science*, 2011). Physically, too, rejection takes a toll. People who routinely feel excluded have poorer sleep quality, and their immune systems don't function as well as those of people with strong social connections, he says." *The Pain of Social Rejection,* Kirsten Weir, April 2012, April 2012 Monitor on Psychology, APA, Vol 43, No. 4 Print version: page 50.

The District Court ruling creates inherent malfunction of good democratic order that will enlarge public opposition to the endearing set of values that once made America shine with a basic fundamental truth that our personhood is protected. In fact the adamancy of the defense has inspired acts of terrorism.

The drug Fentanyl, made by Defendants began turning up in heroin overdoses around the Defendants corporate headquarters. Deaths have doubled since the complaint was filed and, instead of settling, defense was launched. The domestic terror sends a clear message, Defendants product was unreasonably dangerous.[8] Now the wave of terror is spreading nationwide. A February 21, 2014 email to Defendants' attorneys asked Defendants to "consider new procedures for inventory control and management." regarding Fentanyl (first discovered by Dr. Janssen).

[8] "Indeed, terrorist attacks might be defined as violence for the purpose of sending a political message with the aim of influencing policy or at least of voicing disapproval. In this sense, terrorism is one possible method of "political dialogue." Terrorism, Interest-Group Politics, and Public Policy, ROGER D. CONGLETON, The Independent Review, v.VII, n.1, Summer 2002, pg.47 See: "Accidental heroin overdose deaths are up 20% over last year, and up 50% in the last two years…That stronger drug is heroin with Fentanyl a deadly concoction the coroner started seeing late last year. Chemists in the lab test at least four cases a day, and now they're even seeing straight Fentanyl." *Heroin Deaths, Cases Way Up In Miami Valley*, May 13, 2014, abc22.com. See "So far this year, 10 people have died from fentanyl-related overdoses. In 2011, nobody in York County perished from the drug." *Coroner: 'Killer heroin' overdose deaths on the rise in York County*, Mollie Durkin, May 5, 2014Yorkdispatch.com. Also see: "So far this year, Fentanyl has been a contributing factor to the deaths of at least 30 people in Connecticut…That's up from 12 Fentanyl-related deaths last year…" *Fentanyl a Factor in Heroin-Related Deaths Across Connecticut,* Mark Zaretsky, Connecticutmag.com, Dec 26, 2013. See: "At least nine people have died or been hospitalized in New Jersey in recent months after overdosing on fentanyl-laced heroin…the potent synthetic chemical, which has been linked to dozens of deaths in the Northeast, is spreading like wildfire throughout the Garden State." *Fentanyl outbreak reaches NJ: Police say tainted heroin led to 9 overdoses, deaths* , James Queally, Star Ledger, Feb 6, 2014, nj.com.

Another email that same day from Plaintiff to Defendants requested "a log of all Dr. prescriptions for fentanyl in the New Jersey area for 2013." These would have been sent to Bergen County Prosecutor John L. Molinelli so they could be cross checked and accounted for. A February 25, 2014 email from Defendant attorney Hanssen responded: " I am sorry but I cannot help with your request which has nothing to do with the litigation you currently have pending against Janssen."

It is clear error of the court to affirm a logical loophole in law that allows Defendant's course of action. It will continue to maim and disfigure elderly populations and is unusually cruel.

The District Court treats the condition of tardive dyskinesia with indignity and restrains its effort to step in and create effective change where clear conditions of danger in the ordinary use of the product require adjustments be made to protect the consumers. It is not a figment of the past, it is a depredation of the afflicted. The long range goals, objectives and policies of the community must come to terms with this design defect regarding the failure to require lower dosages for the elderly (45+). The damage extends well beyond the past and present state and projects far into the future of all generations. The real crime is that this validation of the

Defendants comes at a period in history where our elderly population is exploding in numbers.

> "The deficit in treatment comes at a time when those over the age of 85 make up the fastest-growing segment of the U.S. population. Nearly 35 million Americans are over 65 years old, according to the 2000 U.S. Census, and that number is expected to double by 2030 to 20 percent of the population." *Fighting ageism*, American Psychological Association, Melissa Dittmann, *Monitor* Staff May 2003, Vol 34, No. 5

The courts' error sustains and affirms these acts of omission that are so cruelly causing the elderly people severe tardive conditions. The Appeals Court must come to terms with the fact that the failures in labeling dosage limits will cause injury in 6 out of ten cases in patients over 45. The fact that Defendants have been made aware of this fact and done nothing is an *actus reus*. "You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted." *United States v. Rodriguez-Alvidrez,* 983 F2d 1079(1993). The Defendants motion for summary judgement demonstrate *mens rea.*

The Appeals Court should acknowledge that the Plaintiff's first opportunity to discover the **negligent cause** came with the release of the consent decrees in the summer of 2012. Instead, the court finds that the acknowledgement of the injury by the Doctor in July 2010 is the timely event; but the Plaintiff was not aware of these notations

until they were presented in the discovery phase of trial preparation.

The Plaintiff suffers anosgnosia (noted by Doctors in their records as a failure to take medications) and Plaintiff was significantly sedated and facing cognitive impairments associated with the treatment and disease. See Honorable Judge Gee, Motion Hearing, 12/13/13, pg.8:8-17 and pg 7: 12-20) The Appeals Court should adjudicate the Plaintiff's anosgnosia coupled with the severe tardive form of dyskinesia as a cause of material obstruction or delay effecting the legal construction of the case and draw necessary conclusions of Defendants negligence, including but not limited to, their failure to change labeling after being advised of the serious adverse events suffered by the Plaintiff.

> "The Eighth, Ninth and Tenth Circuits have recognized an "exception" to this rule where the very injury of which a plaintiff complains prevents him or her from being aware of that injury. *Washington v. United States,* [1985] USCA9 1532; 769 F.2d 1436 (9th Cir.1985) (coma); *Clifford by Clifford v. United States*, [1984] USCA8 653; 738 F.2d 977 (8th Cir.1984) (coma); *Zeidler v. United States*, [1979] USCA10 163; 601 F.2d 527 (10th Cir.1979)

The District Court cites "A plaintiff invoking the discovery rule must: conduct a reasonable investigation of all potential causes of that injury." Order Re: Defendant's Motion for Summary Judgment", pg 5.

The Plaintiff later came to understand there were further obstacles:

> "A number of post mortem studies have indicated structural brain abnormalities in TD Patients… TD patients had macroscopically more cortical atrophy and larger ventricles and microscopically markedly more cell degeneration in the substantia nigra and gliosis in middle brain and brain stem." Dalgalarrondo, P., Gattaz W., ibid.

This seems consistent with Dr. Seeman and Tinazzi's findings

> "While an apparent reduction in dopamine transporters may result from reduced expression of the transporters secondary to antipsychotic treatment, the seemingly increased loss rate is consistent with the accumulation of antipsychotics in the neuromelanin of the substantia nigra, subsequent injury to the dopamine-containing neurons, and the development of extrapyramidal motor disturbances such as tardive dyskinesia or Parkinson's disease."
> *Loss Of Dopamine Neuron Terminals In Antipsychotic-Treated Schizophrenia; Relation To Tardive Dyskinesia*, Philip Seeman & Michele Tinazzi, Progress In Neuropsychopharmacology & Biological Psychiatry
> 2013, 4, pg. 178

The substantia nigra is an important region in brain function, in particular, in eye movement, motor planning, reward-seeking, learning, and addiction.

"Smith et al. noted that 9 of 113 (8%) patients with moderate or severe

> TD were aware of their movement disorders compared with 12 of 155 (8%) of their mild TD patients." *Functional Impairment in Tardive Dyskinesia: medical and psychosocial dimensions*, R Yassa, Acta Pschiatr Scand, 1989:80: 64.

The District Court writes: "plaintiff must plead that, despite diligent investigation of the circumstances of the injury, he or she could not have reasonably discovered facts supporting the cause of action within the applicable

statute of limitations period." Order Re: DMSJ, pg.6. The clock should not toll on Plaintiff until the Consent Decrees and Federal lawsuit established wrongdoing in the failure of efficacy studies . The Appeals Court should note the fact that touted efficacy studies were crucial in Plaintiff's choice to agree to treatment with *Invega Sustenna.* Furthermore, these were not discovered until the publication of the Consent Decrees in August 2012 and the $2.2 billion dollar Federal Settlement regarding "false claims" related to *Risperdal* and *Invega* in November 2013. "As patients and consumers, we have a right to rely upon the claims drug companies make about their products," said Assistant Attorney General for the Justice Department's Civil Division Stuart F. Delery, U.S. Dept. of Justice, Press Release, Monday Nov. 4, 2013.

Findings of fact are reviewed for clear error. See *Husain v. Olympic Airways*, 316 F.3d 829, 835 (9th Cir. 2002). This standard also applies to the district court's application of law to facts where it requires an "essentially factual" review. *See id.* The court reviews adopted findings with close scrutiny, even though review remains to be for clear error. *See Phoenix Eng'g & Supply Inc. v. Universal Elec. Co.,* 104 F.3d 1137, 1140 (9th Cir. 1997).

In determining whether a genuine issue of material fact exists, courts must construe all facts in the light most favorable to the non-moving party and draw all reasonable and justifiable inferences in favor of that party. See *Anderson v.*

Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). " we assume that the non-moving party's factual allegations are correct. *Balint, 180 F.3d at 1050." Western Center For Journalism* v. *Cederquist*, 235 F.3d 1153, 1156 (9th Cir. 2000).

The District Court claims Plaintiff was on "inquiry notice" since November 2010. See Order Re: Defendant's Motion for Summary Judgment", pg 7. The District Court fails to recognize that Plaintiff's original statement of claim sent to Defendant's on November 12, 2012 is entirely timely.

The Defendants-Appellees had a duty to warn of the necessary lower dosage requirements for people forty five and over. "…when the manufacturer or supplier knows of, or has reason to know of, greater dangers not included in the warning, its duty to warn may not be fulfilled." *Stevens v. Parke, Davis & Company*, 9 Cal.3d 51, 65 (1973). This too is a material fact of this instant case. The tardive dyskinesia indication in the *Invega Sustenna* drug's package insert reads:

> "The risk of developing tardive dyskinesia and the likelihood that it will become irreversible appear to increase as the duration of treatment and the total cumulative dose of antipsychotic drugs administered to the patient increase, but the syndrome can develop after relatively brief treatment periods at low doses, although this is uncommon." *Invega Sustenna* package Insert, pg. 14.

The Court in *McNeil* set a new standard of review for tardive symptoms and the need for relevant statistical information regarding cumulative effects. The district court erred in not applying this standard as argued by the Plaintiff at the Hearing on the Motion for Summary Judgment.

> "Because Wyeth advertised that the risk of developing EPS is "comparatively rare," or that it is 0.2% for short term use, just noting that the risk is higher for long-term use may not put a physician on notice that certain studies have found that the risk could be a hundred times higher. That is, because the advertised risk is negligibly low**, the mere statement that the risk increases with use does not put a physician on notice that the increase in risk is of a completely different order of magnitude and class of risk.** Thus, a jury could find that the risk of developing EPS from long-term use was not just higher, but that it was "significantly" higher, and that the label was therefore misleading and inadequate." *McNeil v. Wyeth*, 462 F.3d 364 (5th Cir. 2006).

In fact, Pfizer discontinued Reglan/ Metroclopramide because it caused tardive dyskinesia in 1-2 out of 500 patients. It is hard to believe that *Invega* caused 2 out of a hundred in 13 week trials and is still allowed on the market.

. The long term dilemma of Extra Pyramidal Symptoms, specifically tardive dyskinesia and the statistical risk increase was not represented mathematically, as required by *Mcneil*, thus the inadequacy of the warning.

In *Liss v. Doeff,* 1st. D. Penn., 2000 jury in the circuit court of Philadelphia awarded $6.7 million to a patient afflicted with tardive dyskinesia caused by the neuroleptic ("antipsychotic") drug Risperdal (generic name, risperidone*). Invega Sustenna* is a metabolite of Risperidone. The case was significant in regard to the large award of $6.7 million for a patient who was not completely

disabled. Although requiring frequent periods of rest, and experiencing disfigurement and physical discomfort, she was able to carry out household tasks and to work outside the home. "Clearly, TD can result in decreased socialization and decreased self-esteem which results in adverse effects on quality of life." Smith, Shirlee B., "*Prevalence of tardive dyskinesia in the elderly after 20 years on neuroleptics*" (1996) .Master's Theses. Paper 1264 , pg. 17.

ARGUMENT

Lower dosages for patients 45 and over is absolutely necessary to prevent tardive dyskinesia in the first, second and third years of treatment.

The elderly patients 45 and older have been demonstrated to be 62% likely to suffer tardive dyskinesia after three years of neuroleptic exposure. For the patients on the older side of this cohort group, the numbers are equally considerable.

> "The prospective data of Kane (1990) and Saltz et al. (1991) suggests that the incidence of presumptive tardive dyskinesia in a sample of elderly patients (mean age 77 years) receiving neuroleptics for the first time is 31% after 1 year or almost 10-fold greater than the incidence seen in their younger cohort (Kane et al. 1984, 1986) *Tardive Dyskinesia, A Task Force Report of the American Psychiatric Association*, Dr. Kane, Dr. Jeste, Dr. Casey, et.al., 1992,pg.73

"Disabilities resulting from TD place the elderly at risk. Involuntary body movements cause psychosocial stress." *Prevalence of tardive dyskinesia in the elderly after 20 years on neuroleptics*, Shirlee Smith 1996, SJSU Scholar Works, pg 18.

"Consistent, but slightly higher prevalence rates than reported in the literature, this study found prevalence of 70% for this group of elders with long term medication treatment exposure." Smith, ibid, pg.28.

Even if the court were to find the personal injury cause of action untimely, the design defect projects into the future and is not limited by time. Specifically, the court must concern itself with elderly patients, lower dosages or severe forms of the tardive dyskinesia. It must consider long term treatment of children and treatment before and during pregnancy.

Plaintiff-Appellant believes, to the best of scientific knowledge, that the Defendants-Appellees were negligent for the failure to warn of necessary dosage limitations and not clearly spelling out the cumulative statistics involved with care for patients over forty five.

> "Very high dosages of neuroleptics are used for many reasons today, but it appears time to call a halt. Increasing evidence suggests that high dosages of neuroleptics produce a variety of immediate and possibly later onset side effects, and there is not evidence of higher dosages superiority over modest dosages (Quitkin et al. 1975). *Tardive Dyskinesia and Neuroleptics: From Dogma to Reason*, edited by Dr. Daniel Casey and Dr. George Cardos, 1986, pg114.

The district court ruling was a mixed up basket of fact and law. The injury-in-fact of the severe tardive dyskinesia was qualified by loss of statutory time because milder symptoms were recognized by the district court in error. The law was misconstrued in regards to the statutory authority written in *Greenman.* Discovery delays specifically relate to not only the injury, but the facts surrounding the conditions that bring a reasonable person to suspect that wrongful conduct and negligence on the part of the Defendants caused harm. Discovery of negligence happened at the time of publication of the consent decrees and the Federal settlement.

A "Change-Being-Effected" form that clearly signifies lower dosages for patients forty five and older along with a clear delineation of cumulative statistics regarding the tardive dyskinesia is mandatory..

The Appeals Court should balance the equanimity of determining late discovery balanced against an injury that involves a lifetime of affliction.

The Court should recognize that the discovery issue became actionable when the Consent Decrees were signed and a factual basis for the claim was brought to the attention of the general public.

> "In *Norgart*, we made clear that a cause of action accrues when a plaintiff has reason to discover 'a factual basis' for the claim." (*Norgart*, *supra*, 21 Cal.4th at p. 398.) as cited in *Fox v. Ethicon Endo-Surgery* (2005) 35 Cal.4th 797 [27 Cal.Rptr.3d 661, 110 P.3d 914]

So both Plaintiff's first acknowledgement of injury and the discovery of misconduct must be considered "in the light most favorable" to the non-moving party. This applies to Defendants motion for summary judgment.

The District Court was in fundamental error in its failure to object to time limited discovery versus a ruling that considered a lifetime of injury.

CONCLUSION

The District Court cites that the statute of limitations "begins to run on that cause of action when the investigation would have brought such information to light." Order Re: Defendant's Motion for Summary Judgment", pg 5.

Information did not come to light until after the release of the Consent Decrees in August 2012.

Upon review of the pleadings, the Court will find that less than one year passed from the time the drug was discontinued to the time the complaint was lodged. It is not illogical to assert that the action accrued when the psychopharmocologist decided the drug had caused too much damage to continue using it. If the complaint were truly actionable in July of 2010, it is not unreasonable to conclude that even the less educated professional would have discontinued the drug. Yet this was not done until January 2012, well within the time-frame of the limitation statute.

More importantly, the District Court sets its cites on the mild form of tardive

dyskinesia when clearly it is the severe form the elderly must worry about.

The Defendants' instruction that the patients continue to use the drug "despite" the onset of tardive symptoms puts the patient and doctor in a scenario where continued treatment is mandated regardless of the side effects. The Defendants instructed Doctors to continue using the product even after the discovery of injury. The statute of limitations should not toll until the treatment is discontinued and the actionable injury has accrued.

The Defendants-Appellees make no factual allegations against the prescribing Doctors. A different application of fact and law might determine that all reasonable standards of care were in place and that the Plaintiff-Appellant was afflicted with tardive dyskinesia as a perfectly natural consequence of a regular course of treatment. Regardless of the warning that tardive symptoms may be irreversible, patients are frequently in a position where compulsory treatment via institutionalization is eminent if they fail to comply to a doctor's prescribing judgment that a depot injection is necessary. So the only thing between treatment and side effect is a more adequate warning that directs the prescribing doctor to use lower dosages for patients forty five and older. The Court erred in failing to determine the necessity of more advanced treatment standards for the package insert of *Invega Sustenna*. Lower dosage requirements for the elderly (45+) should have been mandated as a rule of law.

> "Other work on the epidemiology of tardive dyskinesia suggests that increasing age is a factor associated with both persistence and severity of the condition." *"Aging and Tardive Dyskinesia"* by Dr. Saltz & Dr. Kane et al. in "*Neuroleptic Induced Movement Disorders* ", by Drs. Yassa, Nair and Jeste, 1997, pg. 18.

The *Greenman* court established that it is unacceptable to establish limitations on personal injury demands in product liability complaints. Whether the Defendants' acted with deliberate indifference is a matter for the Appeals Court.

Deliberate indifference requires the following: "(1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than gross negligence." *Goodman v. Kimbrough*, 718 F.3d 1325, 1331-32 (11th Cir. 2013) (internal quotation marks omitted). As cited in *Cindy Laine Franklin v. Chris Curry, et al.*, U.S. Ct. App. 11th Cir. ,No. 13- 10129, Dec. 23, 2013.

The District Court ruling is a serious disregard for the health, safety and welfare of future generations of people initiated to the *Invega Sustenna* regiment.

> Plain-error review" involves four prongs: (1) there must be an error or defect the appellant has not affirmatively waived, *United States* v. *Olano*, 507 U. S. 725, 732–733; (2) it must be clear or obvious, see *id.*, at 734; (3) it must have affected the appellant's substantial rights, *i.e.,* "affected the outcome of the district court proceedings," *ibid.*; and (4) if the three other prongs are satisfied, the court of appeals has the *discretion* to remedy the error if it " 'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings,' " *id.*, at 736. Cited in *Puckett v. United States* , 07-9712 (2009)

The courts' act is a continuation of Defendants' act of mayhem. It requires no specific intent to maim or disfigure, the necessary intent being inferable from the types of injuries resulting from certain intentional acts. (*People v. Sears* (1965) 62 Cal. 2d 737, 745 [44 Cal.Rptr. 330, 401 P.2d 938]; *People v. Wright* (1892) 93 Cal. 564, 566 [29 P. 240]; *People v. Nunes* (1920) 47 Cal.App. 346, 348 [190 P. 486]; 1 Witkin, Cal. Crimes (1963) Â§ 282,p. 262.) As cited in *Goodman v. Superior Court (People)* (1978) 84 Cal. App. 3d 621 [148 Cal.Rptr. 799].

The cause of action is the severe form of tardive dyskinesia caused by a failure to warn patients over 45 of injuries relative to their age.

It caused the Plaintiff-Appellant emotional distress, isolating, anti-social behavior, disfigurement and stigmatization. The emotional distress includes the difficulty finding a life partner, raising children, establishing a family. As *Doeff* Court ruled, The quality of life is more than just driving to work and balancing a check book.

Particular attention needs to be paid in the area of fertility, reproduction and male sexual dysfunction. More effective warnings are needed.

> "One recent study … reported rates of sexual dysfunction between 35 and 43 percent for risperidone, olanzapine, and haloperidol." D.L. Kelly and R.R. Conley, *Sexuality and Schizophrenia: A Review*, Schizophrenia Bulletin, Vol. 30, No. 4, 2004, pg.770.

A material of fact is that the *Invega Sustenna* was the direct cause of injuries . The inadequacy of the warning is another material fact. The severe form of tardive dyskinesia afflicting the elderly is also a material fact.

"The plaintiff's burden is to show that a different and adequate warning would have made a difference in the conduct of the person warned. *Allen v. Long Mfg. NC, Inc.*, 332 S.C. 422, 432, 505 S.E.2d 354, 359 (Ct. App. 1998) (citing 63A Am. Jr. 2d Products Liability § 1240 (1997)). Therefore, determining whether a warning is adequate involves an inquiry into causation and whether a different warning would have prevented the injury. *Odom v. G.D. Searle & Co., 979 F.2d 1001 (4th Cir. 1992)* (affirming district court's grant of summary judgment in failure to warn case involving intra-uterine device where plaintiff failed to prove her doctor would have a prescribed a different course of treatment if a more drastic warning had been given). In cases involving prescription drugs and the learned intermediary doctrine, this means that a plaintiff must establish "'the additional non-disclosed risk was sufficiently high that it would have changed the treating physician's decision to prescribe the product for the plaintiff.'" *Sauls v. Wyeth Pharmaceuticals, Inc.*, 2012 WL 724794, at *3 (D.S.C. Mar. 7, 2012) (quoting *Odom v. G.D. Searle & Co.*, 979 F.2d 1001, 1003 (4th Cir. 1992)."

It is reasonable to infer that different dosage requirements would have changed the Doctor's opinion. See Dr. Benarroche deposition,

Defendants' Ex. "B" of MSJ. page 54: 4-16.

"Q. Do you read the package inserts for the medications before prescribing them?

A. Yes.

Q. You said you also keep current with medical literature if new medications are described in them?

A. Yes.

Q. Is there—within the package inserts when you review them, is there any particular areas you look at?

A. Mostly potentially dangerous side effects.

Q. You also look at the indications and the dosing?

A. Indications and dose, sure."

Petitioner-Appellant asks the Appeals Court to reverse the decision and order compensatory and punitive damages. See California Code - Article 1: General Principles [3281. - 3283.]: "Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation there for in money, which is called damages."

Finally, the direct correlation between long term neuroleptic treatment and tardive dyskinesia is so great that the court should consider the experience offered by the Plaintiff and create an entirely new method of supervision through its procedural ruling.

Case Reports/ Review Process

The Plaintiff proposes that any patient treated with a neuroleptic should be required to attend an in-court review session to decide, with an independent expert appointed by the court, whether continued treatment is necessary. The pharmaceutical company and Doctor should split the expense of the court and

reviews should be held every six months.[9] Doctors should be required to submit a report to the court not less than sixty days in advance. Written records should be complete and accurate. This may be required to maintain a system of equitable relief for patients suffering from prolonged treatment exposure. Pharmaceutical companies and Doctors are not inclined to terminate treatments with medications because of the money involved.

Dr. Casey and Dr. Cole write on the subject of tardive dyskinesia:

> "What may aggravate the problem is that in addition to inappropriate indications, some patients may receive unnecessarily long course of neuroleptic therapy without periodic reassessment." *Tardive Dyskinesia and Neuroleptics: From Dogma to Reason*, edited by Dr. Daniel Casey and Dr. George Cardos, 1986, pg 68.

Dr,. Casey and Dr. Gerlach write:

> "The elderly are at a higher risk for developing TD and less likely to have it resolve." *ibid*, pg. 80.

. The time limitation imposed by the District Court fails to confront the nature of the conflict between the manufacturer and consumer. The ruling provides no resolution to a continuing epidemic. The ruling fails to establish the liability of the Defendant. What is more destructive is that while limitations

[9] Order of 23 March 2011 – 2 BvR 882/09 – Federal Constitutional Court. of Germany (Bundes-Verfassungs-Gericht) "The complainant's application for a judicial decision which was directed against that was rejected by the Regional Court (Landgericht) with the proviso that compulsory treatment with atypical antipsychotics was permissible for a period of six months." Press release in English: Press release no. 28/2011 of 15 April 2011.

have been exhausted, the harms continue. Considerable amounts of research indicate the elderly dosage requirements to be incomplete and misleading. As *Invega Sustenna* was a newly introduced product in the market, doctors and patients were unaware of the necessary measures that needed to be taken to prevent injury and the community could benefit from more detailed instructions.

The *Invega Sustenna* package information omits key bits of information that would insure a more successful implementation of its purpose. The dosages lead professionals to incomprehensible conclusions with no hope to avert the inevitabilities of tardive dyskinesia among the elderly (45+ group). The Appeals court must recognize the gravity of the situation. The ruling constitutes a grave precedent that violates the principles imposed by *Greenman* to protect the majority of the population who are without legal knowledge and who are seriously injured in product liability matters. *Res Judicata* could arguably be applied to *Greenman* and preclude a claim of time limits.

It is a matter of great urgency that the Appeals court see the arduous research of Doctors cited herein that contraindicates these regular dosages to elderly. The Appeals Court should GRANT the Plaintiff relief and punitive damages against the Defendant's effort to conceal the problem

The Appeals Court should make findings in the available record and determine that elderly people are particularly vulnerable targets with the *Invega Sustenna* formula and rule that they are being treated beyond the threshold of safety.

> "The importance of up-to-date, peer reviewed scientific medical information as the foundation for good medical care is well documented"*Sunshine Act Unintended Outcomes Sign-On Letter*, October 28, 2013, American Medical Association, et. al.

The Appeals court must extend a rule of substantial reduction to the requirements and order a minimum dosage of 39*mg*, otherwise the elderly may be forcibly compelled to submit to a dangerous treatment that is contrary to social justice. The lack of available long term studies undermines the freedom of choice and is a form of coercion.

> "All foresight of the future, all choice with regard to any possible consequence of action, depends on what is known at the moment of choosing." *The Common Law*, Oliver Wendell Holmes, Little, Brown, 1909, pg.51.

Even the most recent *Invega Sustenna* prescriptions lack long term follow up information and practical dosages for the elderly. The Plaintiff has guided the Defendants knowledge of the facts with his experience and the Defendants have acted with deliberate and reckless indifference. The Defendants should be punished. The Court shall consider "The attitude and conduct of the product seller upon discovery of the misconduct and whether the conduct has been

terminated." Sec. 120 Punitive Damages, Fed. Reg. Vol. 44 No. 212, Model Uniform Product Liability Act.

> "The reason for punishing any act must generally be to prevent some harm which is foreseen as likely to follow that act under the circumstances in which it is done." *The Common Law*, Oliver Wendell Holmes, Little, Brown, 1909, pg.62.

The facts relevant to the trend in schizophrenic treatment with *Invega Sustenna* include permanent, serious injuries and laws must require that the medication meet lower dosage standards suggested by Dr. Janssen and Dr. Jeste, et al. The Defendants were made aware of this fact and never made changes.[10]

The District Courts' failure to order relief is to permanently gift the yoke of affliction as the heritage to our rapidly increasing elderly generation as new victims are added annually. There are no complete statistics to show just what tardive dyskinesia is doing to our people, but conservative estimates have been made in highly specialized branches of medicine with painstakingly accurate work. They are misrepresented by the Defendants to such a degree

[10] JUSTICE SOTOMAYOR "There is a legal obligation to advise the FDA when you have reports of adverse results that suggest the label may be wrong."*Pliva v. Mensing, U.S. Sup. Ct. 09-993, 2011* Oral Arguments pg. 7 20:22. Also see: JUSTICE SCALIA: "Don't they have a distinct obligation to propose labeling changes when they -- when they think they're necessary?" *Pliva v. Mensing, U.S. Sup. Ct. 09-993, 2011* Oral Arguments pg 42, 3:5. Also see JUSTICE KENNEDY: "Can we call this the take steps -- is this the take-steps doctrine, for purposes of discussion here?" *Pliva v. Mensing, U.S. Sup. Ct. 09-993, 2011* Oral Arguments pg. 5: 24-25, pg.6:1

that the real progress made by medicine has been left behind and is now contributing to a national epidemic. The research of medicine deserves our enthusiastic and sustained support.

It has become a side effect of larger organizations to protect the public relations of the company by omitting serious adverse events in there proportion and denying liability rather than to admit that innovation is needed in the exchange of data and information to protect the public from lapses in the supply chain management.

The District Court established rules of order that did not exist in California and this could pave the way for an epidemic in elderly tardive cases that are left unresolved with no solutions put formally in place to protect society.

Government should "move along with the progress of human civilization and not stand still."[11] There are no recent changes to the dosage formulas despite the illuminations of research in the complete record of this case. The leadership of the Appeals court must prevail upon the Defendants. The District court retards and diminishes the fundamental rights ascertained by Justice Traynor in *Greenman.* It is not a promise to humanity that the Courts should renege upon or take away lightly. That right to sue without time limitations in product liability causes must

[11] Franklin Roosevelt, Address at Rochester, N.Y, October 18, 1932, pg.3.

be reaffirmed. The Plaintiff views the District court ruling as insufficient. "You can approach the thing that is before you, the problem in front of you, from the cold matter-of- fact point of view, to think only in terms of business…" or the court can view "things from the point of humanity…"[12]

If it is true, as Dr. Peter Breggin writes, that tardive dyskinesia is an epidemic[13], it must be treated as an emergency and the court must "know the importance of quick action."[14]

A ruling by the Appeals Court that it will not permit the course of treatment for the elderly to continue without recommendations for minimal dosages is mandatory. Defendant's liability and punitive damages for the omission or failure to include these details should be written into order. An order concerning the accurate, scientific and complete presentation of all necessary information of past research and existing clinical trial data by and between supply chain management and final product packaging is again, mandatory. [15] More precise instructions would be invaluable.

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[12] Roosevelt, ibid, pg.22.

[13] "It is difficult to determine the total number of TD cases. Van Putten (see Lund, 1989) estimated 400,000-1,000,000 in the United States. My own earlier estimate is higher, ranging in the several millions (Breggin, 1983). It is no exaggeration to call tardive dyskinesia a widespread epidemic and possibly the worst medically induced catastrophe in history."
Brain-Disabling Treatments in Psychiatry, Dr. Peter Breggin, Springer, 1997, pg.43

[14] The Andromeda Strain, Michael Crichton, Knopf, 1969, pg. 63.

[15] The biased nature of trials and use of third party writers was addressed in *State of Texas vs. Janssen , et al*, 250 Judicial Dist, Travis County, Reporter's record Vol 6, pg, 182-184.

Laws should inspire help to the elderly, not preclude substantive statutory or administrative procedures that leave probabilities for them undefined. The policy of the judiciary must make available the resources of their expertise. The point of purchase must accommodate the elderly without placing undue burdens upon them.

Several important aspects of the immediate future are just beginning to emerge; first, the largely growing population of the elderly, second, the ability to deter the neurological disorder of tardive dyskinesia through lower dosages; third, the simple lack of data samples of the elderly in Defendant's clinical trials and fourth, a failure to present the available data relevant to the elderly so they can make properly informed consent. Also see*: 1 out of every 7 Elderly Nursing Home Residents on Antipsychotics—Despite Risk of Death*, Modern Medicine – July 16, 2011.

The Appeals court must maintain the utmost vigilance after serious consideration of the issues involved. Today the Appeals court can play an important part in preventing an epidemic. The judiciary cannot sit on facts without taking action. The ruling of the lower court is an objective constraint that does not prevent the inevitable progress of the disease. There can be no lack of resolve. The Appeals court must set rigorous standards to prevent the dangers of tardive dyskinesia, setting lower dosages better suit the needs of

the elderly. The Invega package falsely claims: "No dosage adjustment is recommended based on age alone." (Invega package, Section 12.3, "Elderly", pg. 38). This was simply not the truth.

The elderly are entitled to adequate information proposing lower dosages that submit to the requirements of their age, metabolism and senescence.

The Defendants are liable for a design defect that fails to warn the community of the requirements of scientific investigation that put them on notice of the fact that lower dosages were necessary. The Defendants owed a duty of care consistent with the standards established by experts. Failure to implement these standards was tortious.

This case seeks new standards of law for neuroleptic treatment. If implemented, it would change the entire nature of our democratic society. Finally, the goals, objectives and policies of neuroleptic treatment with *Invega Sustenna* are called into question, balanced with the long range, general aims of the global village. Please require lower dosages for people 45 and over.

Sincerely,

May 13, 2014

JONATHAN ELLIOTT
PLAINTIFF/APPELLANT

No. 14-55283

In the United States Court of Appeals
for the Ninth Circuit

JONATHAN ELLIOTT,
PLAINTIFF/APPELLANT

v.

JANSSEN PHARMACEUTICALS, INC &
JOHNSON & JOHNSON
DEFENDANTS/APPELLEES

CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Fed. R. App. P.32(a)(97)(c) and Ninth Circuit Rule 32-1, the attached opening brief is proportionately space, has a typeface of 14 points or more and contains 14,000 words.

In preparing this certificate I relied on the word count generated by Microsoft Word 2010.

May 13, 2014

JONATHAN ELLIOTT
PLAINTIFF/APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2014, two (2) copies of the Brief for Petitioner were served on Respondents by placing them for first class delivery, postage prepaid, addressed to:

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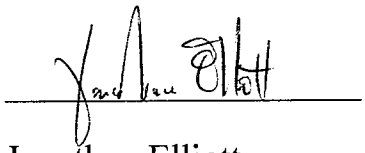

Jonathan Elliott

APPENDIX I

Relevant Court Records

Elliott v. Janssen, et.al

(9th Cir. No. 14-55283

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DOCUMENT

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JS-6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JONATHAN ELLIOTT, Plaintiff, v. JANSSEN PHARMACEUTICALS, INC.) et al., Defendants.	Case No. CV 13-00743 DMG (MRWx) **JUDGMENT**

Pursuant to the Court's Order granting Defendant's Motion for Summary Judgment,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that judgment is entered in favor of Defendants Janssen Pharmaceuticals Inc. and Johnson and Johnson and against Plaintiff Jonathan Elliot, who shall take nothing.

DATED: December 13, 2013

DOLLY M. GEE
UNITED STATES DISTRICT JUDGE

DOCUMENT

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE DOLLY M. GEE, JUDGE PRESIDING

JONATHAN ELLIOTT,

Plaintiff,

VS

JANSSEN PHARMACEUTICALS, INC., et al,

Defendants.

No. **CV-13-00743DMG**

Reporter's Transcript of Proceedings
Motion Hearing
Los Angeles, California
FRIDAY, DECEMBER 13, 2013
3:00 P.M.

ANNE KIELWASSER, CRR, RPR, CSR
Federal Official Court Reporter
312 North Spring Street, Room 432
Los Angeles, California 90012
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AKtranscripts.com

prepare some sort of complaint against them.

And it wasn't really until --

And you can see that I don't acknowledge the injury in the medical report. You could see for yourself in the notation that I'm just not aware that I have tardive dyskinesia up until the point that I read it on the computer screen.

Because -- you have to understand, Your Honor, that in the beginning I had small symptoms. I had a jaw movement and lip movement, but I didn't consider these things anything worth complaining about. It wasn't really until December, January -- December 2011, January 2012 and April, at that -- between those dates, I started having this, like, this problem with my eyes that was developing, and it was at that point after Dr. Elad's visit that I came to grips with the idea that I was suffering from a permanent neurological injury.

And I'd also like to address the issue of the information provided in the packet; and that is, that the McNeal (phonetically spelled) court set really new groundwork for the information process in package inserts. And they said: Look, if you have -- if you have a drug that's point two percent likely to give a person an injury like tardive dyskinesia and that figure jumps up to 50 to 60 percent for people my age in their second and third year, when you're

acknowledges the injury, and that's what -- that's what the courts have really tried to get into the public mind, is that the injury is really -- the clock starts to run where a person acknowledges that he has an injury.

And I'd just like you to -- if you -- if you looked over the Dr. Elad (phonetically spelled), the cardiologist's report that I provided, you'll notice in the cardiologist's report, he says -- and this is -- this is April of 2012, he says: "Mr. Elliott denies strokes, seizure, syncope, headaches, tremors or abnormal movements, some target movements."

Now, I want the Court to realize that I didn't -- I wasn't really aware that I had tardive dyskinesia up until the time that I was sitting on the patient table of Dr. Elad's (phonetically spelled) room watching him type the diagnosis into the computer and watching him type that I had tardive dyskinesia. I went: Oh, my God. You know, I have -- I have an injury, and I don't even know what it is. And then it took -- then it took some time to evaluate the fact that -- that it might be permanent.

And I said to myself -- you know, I asked somebody how long is it, you know, the statute of limitations on personal injury, and somebody said: Well, it's about a year. So, I said: Well, I'll wait about a year for this thing to go away, and then if it doesn't go away, I'll

reviewed your written documents, and I've seen what you've said in those documents --

MR. ELLIOTT: Yes.

THE COURT: -- which is consistent with what you're saying here today. And I am not unsympathetic to your claim. I understand that you feel that you've had an injury, but the basis for my ruling is simply applying the statutes

of limitations, which unfortunately means that your claim is barred because it was filed too late.

MR. ELLIOTT: Well, I'm just asking for the latitude of the court, as Freeman suggested, that people who

APPENDIX II

Petitioner's Exhibits

Elliott v. Janssen, et.al

(9th Cir. No. 14-55283

TABLE OF CONTENTS

Exhibit

"A"

State of New York
Andrew M. Cuomo
Governor

Office of Mental Health
44 Holland Avenue
Albany, New York 12229
www.omh.ny.gov

To: Quality Directors, State Psychiatric Centers
Risk Managers, State Psychiatric Centers

From: Marcia L. Fazio, Deputy Commissioner
Division of Quality Management

Date: August 16, 2012

Subject: **Choking/Aspiration Alert**

The Division of Quality Management has recently reviewed four patient deaths associated with choking.

- A 63 year old gentleman choked while eating an evening snack of cookies and milk. He began coughing and although the Heimlich maneuver was performed, he became unresponsive and later died.
- A 57 year old gentleman, on constant observation, with a history of swallowing inedible objects collapsed and appeared to be choking. Although an obstructing object (newspaper) was felt in his airway and the Heimlich maneuver and lifesaving interventions were initiated, he later died.
- A 63 year old gentleman choked on a piece of meat during dinner, although first responders were able to clear his airway with a laryngoscope and forceps, he remained unresponsive and later died.
- A 51 year old gentleman choked on pancakes at breakfast, although the Heimlich maneuver removed some of the pancakes from his airway, he lost consciousness and became unresponsive and later died.

Similar root causes were identified in each of the deaths. Some of these included: lack of supervision while eating, incomplete assessments, errors during the code, equipment malfunction, and food consistency.

In addition to having the same types of swallowing problems seen in the general public, patients with psychiatric disorders have been identified as having unique risk factors for choking and aspiration. These factors include unsafe eating behaviors (e.g.: food stuffing, talking with food in mouth, failing to chew thoroughly), adverse effects of medications (e.g.: dysphagia, dry mouth, excessive salivation, tardive dyskinesia, sedation), poor dentition and limited awareness and insight regarding swallowing difficulties and eating behaviors. The attached **Alert** highlights the need for facilities and programs to develop policies and procedures to foster a safe eating environment and to encourage safe eating behaviors.

Also attached for your review and consideration are sample policies, forms and safe eating program descriptions from the Buffalo Psychiatric Center. These materials have been used with success as part of this hospital's strategies for reducing the number of choking incidents.

Exhibit

"B"

Reprinted from the Archives of General Psychiatry September, 1995 Volume 52

ORIGINAL ARTICLE

Risk of Tardive Dyskinesia in Older Patients

A Prospective Longitudinal Study of 266 Outpatients

Dilip V. Jeste, MD; Michael P. Caligiuri, PhD; Jane S. Paulsen, PhD; Robert K. Heaton, PhD; Jonathon P. Lacro, PharmD; M. Jackuelyn Harris, MD; Anne Bailey, MS; Robert L. Fell, MS; Lou Ann McAdams, PhD

Background: Neuroleptic-induced tardive dyskinesia (TD) is a major iatrogenic disorder that is more prevalent among older patients. The objective of this study was to determine the incidence of and risk factors for TD in neuroleptic-treated patients over age 45 years.

Methods: We studied 266 middle-aged and elderly outpatients with a median duration of 21 days of total lifetime neuroleptic exposure at study entry. Most patients were treated throughout the study with either a high-potency or a low-potency neuroleptic and maintained on relatively low doses. The patients were followed up at 1- to 3-month intervals with "blind" assessment of psychopathologic condition, clinically as well as instrumentally (ie, using electromechanical sensors with computerized data reduction, including spectral analysis) evaluated movement disorder, and global cognitive function.

Results: Cumulative incidence of TD was 26%, 52%, and 60% after 1, 2, and 3 years, respectively. The principal risk factors for TD were duration of prior neuroleptic use at baseline, cumulative amount of high-potency neuroleptics, history of alcohol abuse/dependence, borderline or minimal dyskinesia, and tremor on instrumental assessment.

Conclusion: Use of higher amounts of neuroleptics, particularly high-potency ones, should be avoided in older patients, patients with alcohol abuse/dependence, or patients with a subtle movement disorder at baseline; these patients are at a higher risk of developing TD.

(Arch Gen Psychiatry. 1995;52:756-765)

ONE OF the most serious adverse effects of neuroleptic therapy is tardive dyskinesia (TD).[1,2] In a prospective study of more than 850 young adult patients (mean age, 29 years), the cumulative incidence of TD after exposure to neuroleptics was found to be 5% after 1 year, 19% after 4 years, and 26% after 6 years.[3] In a study population that consisted mainly of elderly institutionalized or inpatient subjects,[4] the cumulative incidence of TD was reported as 31% after 43 weeks of neuroleptic treatment.

Despite numerous studies spanning more than three decades, the understanding of risk factors for TD is still incomplete. Aging appears to be the predominant patient-related risk factor for TD.[2,5,6] Other patient-related risk factors, about which there is less evidence in the reported results, include female gender,[7] mood disorders,[4,8,9] alcohol or other substance abuse,[10,11] diabetes mellitus,[12-14] smoking,[15,16] African-American ethnicity,[17,18] and cognitive dysfunction.[19]

In terms of neuroleptic-related risk factors, no significant differences among different types of neuroleptics have been reported. A possible exception is clozapine, which reportedly has a much lower risk of TD.[20] Other suggested medication-related risk factors include a high amount of neuroleptics,[21-23] development of extrapyramidal symptoms (EPS) early in the course of neuroleptic treatment,[3,4,24-26] and use of anticholinergic agents.[27]

In an effort to overcome some of the problems associated with subjective ratings of EPS and to improve our skill at early detection of EPS, we have been using a battery of instrumental assessment procedures.[24,28] Instrumental motor measurement systems yield continuous rather than categorical or ordinal data, produce variables that show a linear positive relationship to the severity of the movement dis-

See Methods and Materials on next page

From the Department of Psychiatry, University of California, San Diego (Drs Jeste, Caligiuri, Paulsen, Heaton, Lacro, Harris, and McAdams, Ms Bailey, and Mr Fell), and San Diego Veterans Affairs Medical Center (Drs Jeste, Caligiuri, Paulsen, Lacro, and Harris).

Exhibit

"C"

(CrCl = 10 mL/min to < 30 mL/min) renal impairment, corresponding to an average increase in exposure (AUC_{inf}) of 1.5 fold, 2.6 fold, and 4.8 fold, respectively, compared to healthy subjects *[see Dosage and Administration (2.5) and Use in Specific Populations (8.6)]*.

Hepatic Impairment

INVEGA® SUSTENNA® has not been studied in patients with hepatic impairment. Based on a study with oral paliperidone in subjects with moderate hepatic impairment (Child-Pugh class B), no dose adjustment is required in patients with mild or moderate hepatic impairment. In the study with oral paliperidone in subjects with moderate hepatic impairment (Child-Pugh class B), the plasma concentrations of free paliperidone were similar to those of healthy subjects, although total paliperidone exposure decreased because of a decrease in protein binding. Paliperidone has not been studied in patients with severe hepatic impairment *[see Use in Specific Populations (8.7)]*.

Elderly

No dosage adjustment is recommended based on age alone. However, dose adjustment may be required because of age-related decreases in creatinine clearance *[see Renal Impairment above and Dosage and Administration (2.5)]*.

Race

No dosage adjustment is recommended based on race. No differences in pharmacokinetics were observed between Japanese and Caucasians.

Gender

No dosage adjustment is recommended based on gender, although slower absorption was observed in females in a population pharmacokinetic analysis.

Smoking

No dosage adjustment is recommended based on smoking status. Based on *in vitro* studies utilizing human liver enzymes, paliperidone is not a substrate for CYP1A2; smoking should, therefore, not have an effect on the pharmacokinetics of paliperidone.

13 NONCLINICAL TOXICOLOGY

13.1 Carcinogenesis, Mutagenesis, Impairment of Fertility

Carcinogenesis

The carcinogenic potential of intramuscularly injected paliperidone palmitate was assessed in rats. There was an increase in mammary gland adenocarcinomas in female rats at 16, 47, and 94 mg/kg/month, which is 0.6, 2, and 4 times, respectively, the maximum recommended human 234 mg dose of INVEGA® SUSTENNA® on a mg/m^2 body surface area basis. A no-effect dose was not established. Male rats showed an increase in mammary gland adenomas, fibroadenomas,

Exhibit

"D"

and 203 randomly assigned to placebo group; note that this population includes data from the 2 sites with compliance deficiencies, see Section 4.4).

All aspects of the safety profile are summarized and discussed separately for the transition/maintenance phases and the double-blind recurrence prevention phase, followed by the discussion of results across study phases.

6.2. Treatment-Emergent Adverse Events

6.2.1. Overview of Adverse Events

A summary of treatment-emergent adverse events across the study phases is presented in Table 48.

- Overall, treatment-emergent adverse events were reported for 67% of the 849 subjects during the **transition and maintenance phases.** Adverse events reported for 33% of subjects were considered by the investigators to be at least possibly related to the study drug.
- Three subjects died during the transition and maintenance phases, no subjects died during the double-blind phase, and 2 additional subjects died post-study. Subject 604021 died as a result of suicide, Subject 605026 who had a history of hypertension died of natural causes (most likely from a stroke, as reported by the investigator), and Subject 604062 died due to an accident (fall out of window). One additional post-study death (Subject 607001) occurred as a result of accidental exposure (ingestion of toxic substance) 19 days after discontinuation from the maintenance phase due to failure to meet criteria for the double-blind phase and 47 days after the last injection of study drug. Another post-study death (Subject 602017) occurred as a result of a 'heart attack', as reported by the investigator, 10 days after discontinuation from the maintenance phase due to a serious suicide attempt and 42 days after the last injection of study drug (see Section 6.2.2.1, Table 48, and Table 51).
- During the **transition and maintenance phases,** serious treatment-emergent adverse events were reported in 116 subjects (14%). Adverse events that resulted in discontinuation of treatment were reported in 52 (6%) of all treated subjects.
- During the **double-blind recurrence prevention phase**, treatment-emergent adverse events occurred at similar rate in the placebo group compared with the paliperidone palmitate group (45% vs. 44%). Events considered by the investigators to be at least possibly related to the study drug were reported by 19% of subjects in the paliperidone palmitate group compared with 16% of subjects in the placebo group.
- During the **double-blind recurrence prevention phase**, serious treatment-emergent adverse events were reported in 37 subjects, including 11 (5%) in the paliperidone palmitate group and 26 (13%) in the placebo

Exhibit

"E"

Tardive Dyskinesia: A Task Force Report of the American Psychiatric Association

1992

Published by the American Psychiatric Association
Washington, DC

The prospective data of Kane (1990) and Saltz et al. (1991) suggest that the incidence of presumptive tardive dyskinesia in a sample of elderly patients (mean age 77 years) receiving neuroleptics for the first time is 31% after 1 year or almost 10-fold greater than the incidence seen in their younger cohort (Kane et al. 1984, 1986).

The potential mechanisms for the influence of age in tardive dyskinesia vulnerability remain speculative. Neuronal damage or degeneration, age-related changes in receptor number, sensitivity or plasticity, and the reduced efficiency of adaptive, homeostatic processes may be relevant to the susceptibility to certain drug-induced neurologic side effects in older patients. The development of supersensitive, postsynaptic, dopamine receptors in the basal ganglia was originally considered to be the pathophysiological basis of tardive dyskinesia. Such supersensitivity would seem to be an inevitable consequence of prolonged antipsychotic drug treatment, however, and is therefore insufficient to explain why only a proportion of patients on long-term medication develops dyskinesia (Jeste and Wyatt 1981). An interaction between drug-induced receptor changes in the striatum and age-related degenerative effects in the nigrostriatal system may be a factor contributing to the increased frequency of tardive dyskinesia in the elderly.

Pharmacokinetic mechanisms could also be relevant. Age-related changes in the absorption, metabolism, and excretion of drugs may lead to higher plasma drug levels and delayed clearance. Plasma levels of antipsychotic drugs have been found to be raised in the elderly, compared with younger patients (Jeste et al. 1979b; Yesavage et al. 1981).

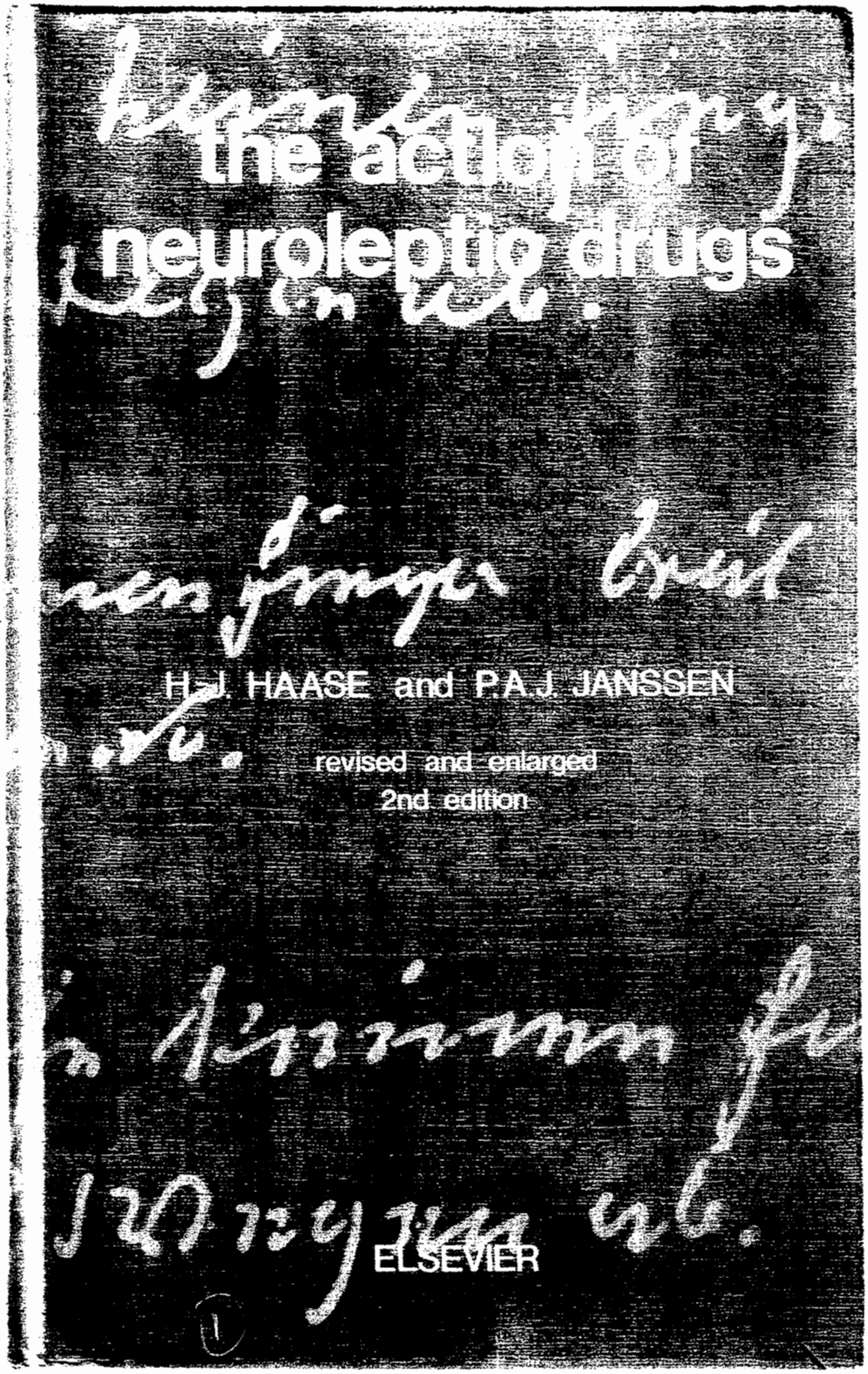
Sex

Looking at the influence of sex, a relatively stable finding has been that women show a greater prevalence of severe dyskinesia, although the available evidence suggests that this is limited to the geriatric age range (Kennedy et al. 1971; Siede and Muller 1967). Smith and Dunn (1979) identified 13 studies that reported statistically significant differences supporting female vulnerability but none indicating higher risk in males. The average unweighted female-to-male prevalence ratio in 13 patient samples was 1.69. Attempts to explain this difference have been generally unrewarding. It is possible that neuroendocrine factors play a role. For example, estrogen may influence striatal dopamine systems, although the nature of this influence is far from clearly established (Hruska 1985). Further, rather than a direct reflection of gender, it has been variously speculated that female sex is a proxy variable for longer duration of hospitalization, higher drug dose, and longer duration of treatment.

This sex difference has not been found so consistently in more recent

Exhibit

"F"


the action of neuroleptic drugs
H.J. HAASE and P.A.J. JANSSEN
revised and enlarged
2nd edition
ELSEVIER

demonstrated that the neuroleptic action is unconditionally associated with the extrapyramidal system.

According to our experience the special features of neuroleptic action and the demarcation line between it and the action of tranquillizers can be characterized under the headings of*:

neuroleptic threshold,
neuroleptic potency,
neuroleptic therapeutic spectrum and
predisposition to the neuroleptic action.

1.2. The neuroleptic threshold

Definition: somatic = the occurrence of an extrapyramidal inhibition of movement usually discernible in fine motor activity (handwriting).
mental = reduction of the psychoenergetic level without disturbances of consciousness or sleep.

The neuroleptic threshold is evidently dose-dependent, but it also depends on the predisposition of the individual patient. It is generally first manifested somatically as an extrapyramidal hypokinesia detectable in the fine motor activity (handwriting). What is of practical importance is that at low initial doses the gait and arm movements usually do not show coarse motor extrapyramidal symptoms. Handwriting is a substantially more precisely differentiated movement and permits particularly exact comparisons, provided that control samples are taken before the start of the treatment (for methods see below). This is of practical importance, because with the more potent neuroleptics an elevation of the beyond the threshold level often very rapidly gives rise to subjectively disturbing parkinsonian symptoms of overdosage. In the case of the neuroleptics that accumulate in the body it is even necessary to reduce the dose immediately (see below). In the mental sphere, when this somatic extrapyramidally detectable neuroleptic threshold has been exceeded the slight affecture relaxing and tranquillizing action converts increasingly into a considerable reduction of the psychoenergetic level with a high level of awareness and vigilance (see above).

On the one hand, there is only a weak correlation between the magnitude of the extrapyramidal symptoms and the intensity of the mental action, so that a strong psychoneuroleptic action can be ac-

*Psychiatric Synopsis "Neuroleptics, particularly neuroleptic action" p. 61ff and "Antiparkinsonian agents in neuroleptic therapy", p. 64ff

lessness and *anxiety*, a combination *with more potent neuroleptics* at doses *above the neuroleptic threshold* being recommended (p. 15). Clozapine in many cases stands out against the other *weak neuroleptics* because of its more *effective antipsychotic action* on the one hand, and because of its *particular physical side effects* on the other hand. To what extent *clozapine* can also exert a neuroleptic action beyond a *major tranquillizer action* is still disputable, while the *motor extrapyramidal side-effects* are modified by the very marked *anticholinergic action* of *clozapine*. *Extrapyramidal fine* and *coarse motor symptoms* are only observed in man after relatively high doses of *clozapine*, whereas any existing coarse motor extrapyramidal symptoms, especially *hyperkinesia*, can be neutralized by this drug.

In the longer-term treatment of patients predisposed towards *paranoid* and other *psychotic experience productions*, in our opinion a combination of *weak* with *more potent neuroleptics*, especially *long-term neuroleptics* administered at doses *above the neuroleptic threshold*, should only be given to patients with a marked tendency towards *internal restlessness*, *anxiety* and possibly *aggressiveness*, since not only are the *higher dose units* of the *weak neuroleptics* able to stress the *body* in a special way (e.g. *pigment deposits* with *phenothiazines*, etc.) but, in addition, the maintenance of *full working capacity* with *vigilance* is best assured with the *more potent neuroleptics*, as is the *reduction* of the *risk of relapse* (provided they are administered at doses *above the neuroleptic threshold*).

Their application is limited by the following symptoms:

The higher the doses used (especially at the start), approaching neuroleptic threshold values or exceeding them on an average, the more subjectively disturbing side-effects – especially side-effects affecting the vegetative system – hinder the therapy. In addition, the body is, in principle, objectively more stressed by drug-induced side-effects, as the applied dose (see milligram values) of a neuroleptic drug increases.

It may be partly because of the higher doses often used with the weaker neuroleptics that the following undesirable and therapy-restricting side-effects – reported more rarely for the more potent neuroleptics – are observed much more commonly in the weak group: hypotension with collapse, tachycardia, accommodation disturbances, dryness of the mouth, swelling of the mucosa, thrombosis, galactorrhoea, menstrual disorders, oedemas (especially of the calf), seizures, photosensitivity, nausea, vomiting, heartburn, and, with the *phenothiazines* and *clozapine* in particular, *leucopenia* and *agranulocytosis*.

In connection with the photosensitizing action, pigment disturbances must be reckoned with when the phenothiazine derivatives are used in

of a weak predisposition to neuroleptic action, the most important therapeutic antipsychotic neuroleptic effects were not achieved until this time. This means that with all at least moderately potent neuroleptics whose action does not include the far-reaching sedative and anxiolytic tranquillizing effects of the weakly potent neuroleptics, the dosage at which the neuroleptic threshold detectable in fine motor extrapyramidal activity is crossed must be regarded as a minimum dose for compensating psychotic experience productions and psychotically determined affective agitation. The neuroleptic threshold dose is thus regarded as the minimum dose.

However, it was also necessary to exceed the neuroleptic threshold in patients receiving a weakly potent neuroleptic if it was not a question of removing the patient's anxiety, calming him down and thus exerting an influence on the acute psychoses via these tranquillizing effects.

4.4.5. Extrapyramidal hyperkinesias (Huntington's chorea, etc.)

Having discussed the comprehensive clinical effects of neuroleptics, a special indication will be discussed in which, as might be expected, the neuroleptic action produces a special effect in all cases, i.e. the damping of choreic extrapyramidal hyperkinesias by neuroleptically induced hypokinesia. If a chronic syndrome is present, inhibition of the choreic hyperkinesia occurs in every case, as the author was able to observe by means of the following tests: drawing with a fixed pencil, pressure of handwriting recordings, tapping test, handwriting, and the ergograph test, carried out during the treatment of 10 choreic patients with reserpine (Haase, 1957a). The clinically relevant result was that very small doses had to be chosen, since at higher dose levels the motor inhibition became too pronounced and the force exerted was so reduced (ergograph), that the motor coordination of the patients as a whole became worse. Optimal results were obtained with doses low enough to inhibit choreic hyperkinesia to such a degree that the patients showed improved motor coordination (e.g. in dressing, eating, etc.).

To demonstrate our point we shall give one example of each of the motor tests applied. Nine hospitalized patients suffering from Huntington's chorea and one patient with bilateral athetosis and choreic hyperkinesia were chosen for the trial.

a) Drawing with a fixed pencil

The patients were asked to manipulate a piece of drawing paper under a fixed pencil in such a way that the following figures were drawn: 2 circles, 4 half circles, 1 square, and 1 staircase, which were joined together to

levels without being entirely dose-dependent, certain individuals being more susceptible than others and certain circumstances favouring their appearance. With some of the neuroleptics, hypnosedative effects and autonomic side-effects such as orthostatic hypotension are also frequently observed.

14.1.2. Behavioural effects in animals

In animals, the most striking behavioural effects produced by neuroleptic drugs are very similar to those described in man: at low dose levels operant behaviour as a whole tends to disappear, while spinal reflexes remain normal; exploratory behaviour decreases, learned conditioned behavioural responses are blocked; the animal responds less, or more slowly, to a variety of visual, tactile or auditory environmental stimuli. Discriminatory ability remains normal. Natural, environmental or drug-induced hyperactivity disappears rapidly in treated animals. At somewhat higher dose levels a typical state of cataleptic immobility and palpebral ptosis, reversible by manipulation are the characteristic features. Spontaneous motor activity is completely abolished and the animal is obviously indifferent to most environmental stimuli, except painful ones. It is still capable, however, of performing rather complicated acts. Muscular tone is usually altered, i.e. increased in several species, particularly during chronic treatment or decreased in other species, after acute administration of a high dose. Muscular tremors, restlessness, neurodysleptic movements and other peculiar symptoms of CNS imbalance may occur in monkeys, cats, sheep and cattle. Prostration without loss of the righting reflex, ataxia, and other symptoms of overt CNS depression are the usual consequences of the administration of high, near toxic doses. Prelethal convulsions are currently observed (Janssen et al., 1965a, 1966).

Almost all neuroleptic drugs are powerful antiemetics. They are capable, at very low dose levels, of blocking the sensitivity of the chemoreceptor emetic trigger zone in the area postrema to certain emetic agents, e.g. apomorphine, thereby preventing the emetic effects that are normally produced by such agents (Janssen et al., 1965b).

14.1.3. The dopamine hypothesis

Since the introduction of the first neuroleptics, numerous pharmacological, biochemical and clinical investigations were undertaken to better characterize the neuroleptic effect in both animals and man.

Direct biochemical evidence of a dopaminergic involvement of neuroleptics was provided by the observation that 3-methoxytyramine and homovanillic acid (HVA) were found to be increased in the brain of various animal species after the administration of neuroleptics (Carlsson

Exhibit

"G"

H. R. 3162

One Hundred Seventh Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Wednesday, the third day of January, two thousand and one

An Act

To deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

"(4) to a governmental entity, if the provider reasonably believes that an emergency involving immediate danger of death or serious physical injury to any person justifies disclosure of the information; or

"(5) to any person other than a governmental entity.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 121 of title 18, United States Code, is amended by striking the item relating to section 2702 and inserting the following:

"2702. Voluntary disclosure of customer communications or records.".

(b) REQUIREMENTS FOR GOVERNMENT ACCESS.—

(1) IN GENERAL.—Section 2703 of title 18, United States Code, is amended—

(A) by striking the section heading and inserting the following:

"§ 2703. Required disclosure of customer communications or records";

(B) in subsection (c) by redesignating paragraph (2) as paragraph (3);

(C) in subsection (c)(1)—

(i) by striking "(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may" and inserting "A governmental entity may require a provider of electronic communication service or remote computing service to";

(ii) by striking "covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

"(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity" and inserting ")";

(iii) by redesignating subparagraph (C) as paragraph (2);

(iv) by redesignating clauses (i), (ii), (iii), and (iv) as subparagraphs (A), (B), (C), and (D), respectively;

(v) in subparagraph (D) (as redesignated) by striking the period and inserting "; or"; and

(vi) by inserting after subparagraph (D) (as redesignated) the following:

"(E) seeks information under paragraph (2).";

(D) in paragraph (2) (as redesignated) by striking "subparagraph (B)" and insert "paragraph (1)".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 121 of title 18, United States Code, is amended by striking the item relating to section 2703 and inserting the following:

"2703. Required disclosure of customer communications or records.".

SEC. 213. AUTHORITY FOR DELAYING NOTICE OF THE EXECUTION OF A WARRANT.

Section 3103a of title 18, United States Code, is amended—

(1) by inserting "(a) IN GENERAL.—" before "In addition"; and

(2) by adding at the end the following:

"(b) DELAY.—With respect to the issuance of any warrant or court order under this section, or any other rule of law, to search for and seize any property or material that constitutes evidence of a criminal offense in violation of the laws of the United States, any notice required, or that may be required, to be given may be delayed if—

"(1) the court finds reasonable cause to believe that providing immediate notification of the execution of the warrant may have an adverse result (as defined in section 2705);

"(2) the warrant prohibits the seizure of any tangible property, any wire or electronic communication (as defined in section 2510), or, except as expressly provided in chapter 121, any stored wire or electronic information, except where the court finds reasonable necessity for the seizure; and

"(3) the warrant provides for the giving of such notice within a reasonable period of its execution, which period may thereafter be extended by the court for good cause shown.".

SEC. 214. PEN REGISTER AND TRAP AND TRACE AUTHORITY UNDER FISA.

(a) APPLICATIONS AND ORDERS.—Section 402 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1842) is amended—

(1) in subsection (a)(1), by striking "for any investigation to gather foreign intelligence information or information concerning international terrorism" and inserting "for any investigation to obtain foreign intelligence information not concerning a United States person or to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution";

(2) by amending subsection (c)(2) to read as follows:

"(2) a certification by the applicant that the information likely to be obtained is foreign intelligence information not concerning a United States person or is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution.";

(3) by striking subsection (c)(3); and

(4) by amending subsection (d)(2)(A) to read as follows:

"(A) shall specify—

"(i) the identity, if known, of the person who is the subject of the investigation;

"(ii) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied;

"(iii) the attributes of the communications to which the order applies, such as the number or other identifier, and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied and,

Exhibit

"H"

LARRY GELBART

9.3.99

To Whom It May Concern.

I think that Jonathan Elliott would make a fine agent.

I have always known him to be totally honest & reliable -

Sincerely,

WRITER/PRODUCER

CARL REINER

September 3, 1999

To the Screen Actor's Guild,

Please consider Jonathan Elliott for a position as an agent with your Guild. I have always known him to be an honest sincere person and I believe he will make a fine agent.

Sincerely,

Carl Reiner
Actor/Producer/Writer/Director

RECEIVED
SEP 07 1999
AGENCY DIVISION
SCREEN ACTORS GUILD

Exhibit

"I"

useful safe life stated *by the product seller*. A product seller can place some reliance on this provision when it has indicated that a product should not be used beyond a certain period of time. However, Subsection (A) does not give the product seller absolute power to limit a product's useful safe life. While this was suggested in "Velez v. Craine & Clark Lumber Corp.," 33 N.Y.2d 117, 305 N.E.2d 750, 350 N.Y.S.2d 617 (1973), almost all courts would insist on retaining judicial power to determine whether the product seller's limitation was a reasonable one. *Cf.* "Henningsen v. Bloomfield Motors, Inc.," 32 N.J. 358, 161 A.2d 69 (1960). Further, even the "Velez" court indicated that a product seller's limitation on useful life could not bind the rights of a non-purchaser claimant. Nevertheless, where the product seller imposes a reasonable limitation, made in good faith to protect the user, the trier of fact shoud give very serious consideration to this fact in determining whether the product was used beyond its useful safe life.

Factor (e), dealing with modifications of the product by users or third parties, relates to conduct that might shorten or lengthen the useful life of the product. While the Act treats product modifications in Section 112, they are also factors in determining whether a product has been used beyond its useful safe life.

(B) *Statute of Repose.*

(1) *Generally.* Statutes of repose differ from statutes of limitation in that they set a fixed limit after the time of the product's manufacture, sale, or delivery beyond which the product seller will not be held liable. The rationale of such statutes is threefold. First, the fact that a product has been used safely for a substantial period of time is some indication that it was not defective at the time of delivery. Second, if a product seller is not aware of a claim, the passing of time may make it extremely difficult to construct a good defense because of the obstacle of securing evidence. Although the burden of proof on the issue of defectiveness remains on the claimant under the Act, a jury, as a practical matter, may demand an explanation from a product seller when the claimant has suffered a severe injury. The third rationale is that persons ought to be allowed, as a matter of policy, to plan their affairs with a reasonable degree of certainty. This goes to the heart of the product liability insurance rate-setting problem. Even though past data show that 83.5 percent of bodily injury claims arise within a ten-year period,[13] there is no safeguard in the existing law that the past will portend the future. There is always the possibility that the number of claims for older products will increase. *See* "ISO Closed Claims Survey" at 107.

On the other hand, consumers are justifiably concerned about overly broad absolute cut-offs of their right to sue. This provision recognizes consumer concerns in three basic ways:

(1) The term of the statute is ten years—beyond the term enacted or proposed in a number of states;

(2) The statute begins to run at the time of delivery, not the time of manufacture; and

(3) The statute does not contain an absolute cut-off, but rather a presumption that the product has been used beyond its useful safe life. Colorado law utilizes this approach. "Colo. Rev. Stat." Section 13–21–403(3) (Supp. 1978). Most other state product liability statutes do not.

Consumer concerns are also addressed by three of the four additional restrictions contained in Subsection (B)(2).

(2) *Limitations on Statute of Repose.* This Subsection contains four key limitations on its scope of operation.

First, Subsection (B) does not apply when a product seller has expressly warranted or promised that a product can be used safety for a period longer than ten years. *See* Subsection 102(K) (definition of "express warranty").

Second, the statute of repose provisions do not apply when a product seller intentionally misrepresented facts about its product and this misrepresentation was a substantial cause of claimant's harm.

Third, Subsection (B) does not affect contribution and indemnity claims. Thus, an intermediate product seller will not have to absorb a liability loss that was the true responsibility of the original manufacturer. *See* Defense Research Institute, "Products Liability Position Paper" at 22 (monograph 1976); *see also* Phillips, *supra*, 56 "N.C. L. Rev." at 670–71 (1978).

Fourth, there is an exception for products that cause perceptible harm only through prolonged exposure (*see, e.g.*, "Michie v. Great Lakes Steel Div., National Steel Corp.," 495 F.2d 213 (6th Cir. 1974)), or that cause harms that take many years to manifest themselves. *See* "Sindell v. Abbott Laboratories," 85 Cal. App. 3d 1, 149 Cal. Rptr. 138 (1978). An exception is also made for the unusual situation in which a product contains, at the time of delivery, a hidden defect that is not discoverable by a reasonably prudent product user and does not manifest itself until after a ten-year period has expired. *See* "Mickel v. Blackmon," 252 S.C. 202, 166 S.E.2d 173 (1969) (plastic used on gearshift lost its resiliency when exposed to sunlight).

If the ten-year presumption does not apply, a product seller can still prove that the product has been utilized beyond its useful safe life under Subsection (A).

(C) *Statute of Limitation.* Tort statutes of limitation traditionally begin at the time a person is injured. This Subsection follows that approach. Nevertheless, in accord with justified consumer concerns, Subsection (C) extends the limitation period beyond the time of harm in situations where the claimant would have no reason to know about the harm or the causal connection to a defective product (*e.g.*, the case of long-term pharmaceutical harms). This reflects a general trend in both statutory and case law. *See* Birnbaum, " 'First Breath's' Last Gasp: The Discovery Rule in Products Liability Cases," 13 "Forum" 279 (1977); and Annot., 91 "A.L.R.3d" 991 (1979). The two-year period represents the length of the traditional state statute of limitation based on claims for negligence. In light of the Act's adoption of the discovery rule, this is the maximum period that seemed to be appropriate.

The underlying philosophy of this Section is congruent with Sections 105 and 106, which shield product sellers from liability for risks that they would have no reason to discover at the time of manufacture.

* * * * *

Code

Sec. 111. Comparative Responsibility and Apportionment of Damages

(A) *Comparative Responsibility.* All claims under this Act shall be governed by the principles of comparative responsibility. In any claim under this Act, the comparative responsibility of, or attributed to, the claimant shall not bar recovery but shall diminish the award of compensatory damages proportionately, according to the measure of responsibility attributed to the claimant.

(B) *Apportionment of Damages.*

(1) In all claims involving comparative responsibility, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, the court shall make findings, indicating.

(a) The amount of damages each claimant would be entitled to recover if the comparative responsibility of each party were disregarded; and

(b) The percentage of the total responsibility of all parties to each claim that is to be allocated to each claimant

[13] Figure for capital goods.

In addition, Subsection (C) provides for a layperson to be included to help assure that the consumer perspective regarding product safety is represented. The process of selecting a layperson should not be complicated. It is suggested that either normal jury rolls be utilized or that a list of laypersons be compiled for this purpose.

Aside from general guidelines regarding fairness and lack of bias, the Act does not outline the method of choosing arbitrators, but leaves that matter to the individual states. A state can help implement the general guidelines by requiring each arbitration panel candidate to disclose any personal acquaintance with the parties or their counsel and allow a *voir dire* examination. *See* "Mich. Comp. Laws Ann." Section 600.5045(1)(2) (Supp. 1978). Some of the better procedures include:

(1) Having the American Arbitration Association select a pool of candidates according to its established selection procedures. Each party is allowed to reject certain candidates and rate the remainder in order of preference. Additional provisions take effect if this procedure fails to produce a panel. *See* "Mich. Comp. Laws Ann." Section 600.5044(4)(5) (Supp. 1978);

(2) Having the court appoint arbitrators. "Mass. Ann. Laws" ch. 231, Section 60(B) (Supp. 1978);

(3) Having an arbitration administrator appoint arbitrators. "Wis. Stat. Ann." Section 655.02 (Supp. 1979); and

(4) Having the parties and court combine to appoint arbitrators. "Neb. Rev. Stat." Sections 44–2840, 2841 (Supp. 1978); "Ohio Rev. Code Ann." Section 2711.21(A) (Supp. 1979).

(D) *Arbitrators' Powers.* These provisions are taken from the Department of Justice proposal on arbitration. They grant the arbitrators jurisdiction and also give them powers of subpoena.

(E) *Commencement.* This provision is also derived from the Department of Justice proposal. Its purpose is to help expedite the proceeding. The Act contains a slight modification of the Justice proposal in order to allow an extension for "good cause shown." This seems appropriate in light of the fact that some product liability cases are very complex. *Cf.* "Ariz. Rev. Stat. Ann." Section 12–567(C) (Supp. 1978) (medical malpractice).

(F) *Evidence.* One method of expediting the process is to use informal means of proof. Nevertheless, some guidelines are needed. The Act follows the Department of Justice proposal in referring to the Federal Rules of Evidence as general guidelines. Strict adherence to rules of evidence is not required. *See* "Ariz. Rev. Stat. Ann." Section 12–567(D) (Supp. 1978).

(G) *Transcript of Proceeding.* With respect to the provision of a transcript of proceeding, the Act generally follows the Department of Justice draft.

(H) *Arbitration Decision and Judgment.* The Act follows the Department of Justice proposal's provisions on decisions and judgment. The parties may request a trial on issues of law or fact. If they do not so request in a timely manner, the action is at an end—there is no appeal.

(I) *Trial Following Arbitration.* The Act follows the approach taken by a number of state medical malpractice arbitration statutes. It admits the results of the arbitration proceeding into evidence before the jury. This should act as a deterrent against seeking unnecessary trials. *See, e.g.,* "Ariz. Rev. Stat. Ann." Section 12–567(M) (Supp. 1978); "Mass. Ann. Laws" ch. 231, Section 60(B) (Supp. 1978). *Cf.* "Wis. Stat. Ann." Section 655.19 (Supp. 1979) (excluding findings and order of arbitration panel).

The approach of Section 116 appears to be in accord with the Federal Constitution. *Cf.* "*Ex parte* Peterson," 253 U.S. 300, 309 (1920). Moreover, with the exception of two Ohio lower court decisions, state courts have upheld the constitutionality of provisions that do admit panel findings before the jury. *See* "Eastin v. Broomfield," 116 Ariz. 576, 570 P.2d 744, 750 (1977); "Attorney General v. Johnson," 282 Md. 168, 385 A.2d 57, 67–68 (1978)" "Paro v. Longwood Hosp.," Mass. Adv. Sh. (1977) 2353, 369 N.E.2d 985 (1977); "Prendergast v. Nelson," 199 Neb. 97, 256 N.W.2d 657 (1977); "Strykowski v. Wilkie," 81 Wis. 2d 491, 261 N.W.2d 434 (1978). *contra* "Simon v. St. Elizabeth Medical Center," 3 Ohio Op. 3d 164, 355 N.E.2d 903, 907–09 (C.P. 1976); "Graley v. Satayatham," 74 Ohio Op. 2d 316, 343 N.E.2d 832 (C.P. 1976). *See generally* Reddish, "Legislative Response to the Medical Malpractice Insurance Crisis: Constitutional Implications," 55 "Tex. L. Rev." 759, 793 (1977); Lenore, "Mandatory Medical Malpractice Mediation Panels—A Constitutional Examination," 44 "Ins. Counsel J." 416, 422 (1977).

A possible drawback of this Section's approach is that a jury may have difficulty evaluating the conclusions of the panel where the jury is not privy to the prior fact-finder's qualifications and method of operation. Also, the jury may get sidetracked from the actual evidence in the case. *See* the observations of Judge Hinton in a classic comment, 27 "Ill. L. Rev." 195 (1932); Annot., 18 "A.L.R.2d" 1287 (1951). *But see* Fed. R. Evid. 803 (22) (admitting felony convictions in a cognate civil case). Nevertheless, the benefits to be gained by a reduction in transaction costs outweigh these concerns and support the admission of the results of the arbitration proceeding into evidence at trial.

Subsection (I)(4) provides an additional deterrent against ill-considered appeals for trials following arbitration. If a party fails to obtain a judgment more favorable than the arbitration award, the court will assess the cost of the arbitration proceeding, including the amount of arbitration fees, plus interest, against that party.

In light of the fact that the present product liability system has created serious problems and the fact that mandatory non-binding arbitration has the potential for dealing with some of those problems, this slight incentive for retaining a sound arbitration award should not run afoul of constitutions in most states. *See* "Task Force Report" at VII–233. The Act does not enumerate grounds upon which a court may vacate an arbitration award. Guidance on this issue may be obtained from Section 12 of the "Uniform Arbitration Act."

* * * * *

Code

Sec. 117. Expert Testimony

(A) *Appointment of Experts.* The court may, on its own motion or on the motion of any party, enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witness agreed upon by the parties, and may appoint witnesses of its own selection. The court may consult with knowledgeable individuals or with professional, academic, consumer, or business organizations and institutions to assist with the selection process. An expert witness shall not be appointed by the court unless the expert consents to serve. An expert witness appointed by the court shall be informed of his or her duties in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have an opportunity to participate. An expert witness so appointed shall advise the parties of any findings; shall be available for deposition by any party; and may be called to testify by the court or any party. The court-appointed expert witness shall be subject to cross-examination by each party, including the party calling that expert as a witness.

(B) *Compensation.*

(1) Expert witnesses appointed by the court are entitled to reasonable compensation for their services in an amount to be determined by the court. The court, in its discretion, may tax the costs of such expert on one party or apportion them among parties in the same manner as other costs.

(2) In exercising this discretion, the court may consider:

(a) Which party, if any, requested the court appointment of the expert;

(b) Which party had judgment entered in its favor; and

(c) Whether the amount of damages recovered in the action bore a reasonable relationship to the amount sought by the claimant or conceded to be appropriate by the product seller or other defendant.

(C) *Disclosure of Appointment.* In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court has appointed the expert witness.

(D) *Parties' Selection of Own Experts.* Nothing in this Section shall limit the parties in calling expert witnesses of their own selection.

(E) *Pre-Trial Evaluation of Experts.* The court in its discretion may conduct a hearing to determine the qualifications of all proposed expert witnesses. The court may order a hearing on its own motion or on the motion of any party.

(1) *Need for Pre-Trial Evaluation.* In determining whether to grant such a motion, the court shall consider:

(a) The complexity of the issues in the case; and

(b) Whether the hearing would deter the presentation of witnesses who are not qualified as experts on the specific issues.

(2) *Factors in Evaluation.* If the court decides to hold such a hearing, it shall consider;

(a) The background and skills of the proposed witness;

(b) The formal and self-education the proposed witness has undertaken relevant to the case or to similar cases; and

(c) The potential bias of the proposed witness.

(3) *Findings of Fact.* In making a determination as to whether a proposed expert witness is qualified, the court shall state its findings of fact to the parties.

(4) *Determination.* Based upon its findings of fact regarding the qualifications of any proposed expert witness, the court, in its discretion, may limit the scope of the witness' testimony, or may refuse to permit such witness to testify as an expert.

* * * * *

Analysis

Sec. 117. Expert Testimony

In General. The Task Force's "Legal Study" demonstrated that product liability cases are often compromised because of the lack of standards with regard to selecting and presenting expert testimony. *See* Volume IV, "Legal Study" at 153–155. One part of the problem is the biased expert; another is the unqualified expert.

Even if experts are properly qualified and objective, a jury of laypersons is often in a poor position to determine which expert is correct. For this reason, this Act gives the court power to make greater use of pre-trial arbitration where an unbiased, qualified expert will serve on the panel. *See* Section 116. Where arbitration is not used, however, this Section should promote the goal of presenting objective and sound expert testimony to the jury.

(A) *Appointment of Experts.* Subsection (A) is based on Rule 706 of the Federal Rules of Evidence and similar state rules. It indicates that courts have the power to appoint experts on their own authority. A number of courts have utilized this power even without the benefit of Fed. R. Evid. 706 or a similar state rule. *See* Annot., 95 "A.L.R.2d" 390 (1964). As the "Task Force Report" noted, the presence of a court-appointed expert "has a cautionary impact on the expert for hire whose theories at trial are subject to dispute not only by an adversary expert, but also by a neutral court-appointed one." "Task Force Report" at VII–43, *citing* Mitchell, "The Proposed Federal Rules of Evidence: How They Affect Product Liability Practice," 12 "Duquesne L. Rev." 551, 557–58 (1974). *See also* 2 J. Wigmore, "Evidence" Section 563, at 648 (3d ed. 1940) (". . . this expedient would remove most . . . abuses").

Subsection (A) also encourages the court to seek the assistance of various individuals, organizations, or institutions in making the selection of a court-appointed expert. The court may wish to utilize this opportunity to establish a panel of independent experts, recognized as such by their peers, from which selections for individual cases may be made. The court may also seek the assistance of these organizations to evaluate the credentials of expert witnesses nominated by the parties.

One problem with court-appointed experts is that the trier of fact may give them an aura of infallibility which they do not deserve. Under Subsection (A), this possibility is diminished because the experts are subject to cross-examination by *each* party. Also, Subsection (C) allows the court in its discretion to decline to disclose to the jury that the expert witness is, in fact, court-appointed.

(B) *Compensation.* Under Fed. R. Evid. 706 and similar state rules, compensation of experts is left to the judge's discretion. Subsection (B) goes a step farther and provides three guidelines for compensating experts. These guidelines should serve as an added inducement for attorneys to present objective expert testimony. The guidelines suggest that the court may impose the cost of the court-appointed expert on losing parties as well as on parties whom the court finds were substantially inaccurate in their estimation of damages.

(C) *Disclosure of Appointment.* Subsection (C) follows Fed. R. Evid. 706. In most instances, it is important for the trier of fact to appreciate that the witness is court-appointed. However, circumstances may arise in which the court believes disclosure of that fact will give the witness too much credence with the jury. Therefore, the court has the discretion to withhold the information when it is appropriate to do so.

(D) *Parties' Selection of Own Experts.* Subsection (D) also follows Fed. R. Evid. 706. Precluding the parties from introducing their own experts would vest too much power in court-appointed experts.

(E) *Pre-Trial Evaluation of Experts.* A rule authorizing a court-appointed expert does not, in and of itself, provide guidance about who is properly qualified to testify in product liability cases. There are many approaches to that issue. One approach, used in some medical malpractice statutes, would require that an expert witness spend a substantial portion of his or her professional time in the actual practice of his or her area of expertise. While this approach may be appropriate in the area of medical malpractice, it was not followed here because a person may be well-versed in technical product liability matters even if he or she does devote substantial time to research or other endeavors other than actual practice. *See* "Task Force Report" at VII–44. Unfortunately, it is impractical to utilize a "standard test" for all experts in product liability cases. *See* Donaher, Piehler, Twerski & Weinstein, "The Technological Expert in Products Liability Litigation," 52 "Tex. L. Rev." 1303, 1325 (1974).

(1) *Need for Pre-Trial Evaluation.* This rule gives some guidance to the trial court in deciding whether to conduct a pre-trial hearing on the qualifications of expert witnesses. It is not necessary or

cost-efficient to utilize the procedure in *all* cases. It is appropriate to do so in more complex cases and also where the pre-trial hearings would serve as a deterrent to the presentation of witnesses who were not qualified. Such a deterrent should discourage parties from prolonging the litigation needlessly and, thus, encourage the expeditious resolution of claims under this Act. Either party may bring this matter before the court by motion.

(2) *Factors in Evaluation.* The factors in evaluation are drawn from Donaher *et al., supra,* 52 "Tex. L. Rev." 1303.

The court should examine the expert witness' background and skills and determine whether they are appropriate for the purposes of the case. The court should not only review the witness' formal education, but also whether the witness had undertaken specific preparation for the litigation before the court. Finally, the court should examine a witness for bias. A witness with marginal expert skills and a strong bias should be considered unqualified.

(3) *Findings of Fact.* If it seems clear to the court that the expert's background and experience do not qualify the expert to testify, it should state this conclusion in its findings of fact to the parties.

(4) *Determination.* This provision empowers the court to limit the scope of an expert's testimony to the witness' specific area of expertise. It also allows the court to refuse to permit the witness to testify as an expert when that individual is not qualified to do so.

* * * * *

Code

Sec. 118. Non-Pecuniary Damages

(A) For the purposes of this Section, "non-pecuniary damages" are those which have no market value and do not represent a monetary loss to claimant.

(B) When sufficient evidence has been introduced, the amount of non-pecuniary damages shall be determined by the trier of fact. However, the court shall have and shall exercise the power to review such damage awards for excessiveness.

***Optional Subsection**

[(c) Non-pecuniary damages under this Act shall not exceed $25,000, or twice the amount of the pecuniary damages, whichever is less, unless the claimant proves by a preponderance of the evidence that the product caused claimant to suffer serious and permanent or prolonged (1) disfigurement, (2) impaired of bodily function, (3) pain and discomfort, or (4) mental illness.]

***Optional Subsection**

[(D) Every third year following the effective date of this Act as stated in Section 122, the ———— Committee(s) of [each House of] the Legislature of this State shall review the monetary limitations contained in Subsection (C) to determine whether such limitations should be changed in view of the economic conditions existing at that time. Upon a finding that such change is warranted, said Committee(s) shall introduce legislation to amend the monetary limitations contained in Subsection (C).]

* * * * *

Analysis

Sec. 118. Non-Pecuniary Damages

Claimant's "non-pecuniary damages" include awards for pain and mental suffering. They have no market value and, thus, are to be contrasted with pecuniary damages which compensate victims for lost wages, medical and rehabilitation costs, and other actual expenditures brought about by an unreasonably unsafe product.

According to the "ISO Closed Claims Survey," 70 percent of claims closed with payment include amounts in addition to a claimant's pecuniary loss. *See* "ISO Closed Claims Survey" at 54. Moreover, the average amount of payment above pecuniary loss increases significantly in the higher payment range. *Id.* at 54–55. A most important reason for the difficulty in setting product liability rates is the "open-endedness" of damages for pain and suffering. *See* "Task Force Report" at VII–64–65. These escalating premiums have an inflationary impact on consumer prices as the product seller's insurance costs are passed on to the public. Damages that go beyond the amount necessary to ensure that the claimant receives reasonable compensation for the harm suffered represent an unwarranted cost.

The "Task Force Report" suggested that limits on awards for pain and suffering "would reduce uncertainty and thereby mitigate the 'apprehension factor' that has contributed to the rise in product liability insurance rates." *Id.* at VII–65. Nevertheless, such awards have deep historical roots and should not be limited in a manner that unreasonably curtails the rights of injured parties. Section 118 takes the position that a fixed limit on the amount of non-pecuniary damages is appropriate where claimant's harm is only temporary.

Section 118 is predicated on an examination of the weaknesses in the major rationales offered in support of awards for non-pecuniary damages. The award for non-pecuniary damages arose in early common law cases as a substitute for an injured claimant seeking personal "vengeful retaliation." *See* "Task Force Report," *id.* In those cases, the defendant usually committed an intentional wrong. This rationale has little application to cases arising under product liability. Under this Act, a product seller may be held liable for harm caused by products found to be defective in construction regardless of fault. The same result occurs when an express warranty is not true. In cases of harm caused by products found to be defective in design, or defective because of the absence of adequate warnings, the trier of fact must consider more sophisticated matters than would be applied under a general negligence standard.

A second rationale to support the award of damages for pain and suffering is that they have an important deterrent function. The "Task Force Report" found evidence that the general product liability problem caused manufacturers to devote more attention to product liability loss prevention techniques. *See* "Task Force Report" at VI–50. The approach taken in Section 118 retains this deterrent function while placing some reasonable limits on awards for pain and suffering.

A third rationale, supported by members of the plaintiffs' bar and some economic legal scholars, is that awards for pain and suffering are a reasonable attempt to reduce the serious discomfort endured by a claimant. *See* R. Posner, "Economic Analysis of Law" 82 (1972). On the other hand, studies have questioned whether monetary awards for pain and suffering do anything to alleviate the symptoms they are alleged to address. *See* J. O'Connell & R. Simon, "Payment for Pain & Suffering: Who Wants What, When & Why" (1972); Peck, "Compensation for Pain: A Reappraisal in Light of New Medical Evidence," 72 "Mich. L. Rev." 1355 (1974). This Section adheres to the former assumption to the extent that when a claimant suffers serious and permanent or prolonged (1) disfigurement, (2) impairment of bodily function, (3) pain and discomfort, or (4) serious mental illness, the amount of non-pecuniary damages is left to the sound discretion of the trier of fact with appropriate review by the court in cases of abuse of that discretion.

However, when the claimant has not suffered such serious and permanent or prolonged harms,[17] non-pecuniary

[17] The Section does not address the question of whether non-pecuniary damages should be allowed or limited in wrongful death or survival actions.

from the product seller. Since the product seller would be able to distribute the cost of a judgment that included this amount among consumers through product pricing, the public may be subjected to excessive, duplicative costs.

Section 119 defines a "public source" as a fund more than half of which is derived from general tax revenues. This would include welfare benefits and other forms of medical, hospitalization, and disability benefits which are funded by state or federal tax funds. It does not include Worker Compensation payments (which are specifically dealt with in Section 114), employee group insurance plans, or other similar sources. It also does not presently include payments received pursuant to the "United States Social Security Act." Although Social Security contributions are withheld from an employee's pay, they are not "general tax revenues." However, if the method of funding the Social Security system is changed, such payments might then come within the operation of this Section. *Compare* the approach taken in Section 119 *with* the various approaches taken in state medical malpractice statutes. *See, e.g.,* "Tenn. Code Ann." Section 23–3418 (Supp. 1978) (complete abrogation of collateral source rule expressly includes Social Security benefits); "Neb. Rev. Stat." Section 44–2819 (Supp. 1978) (partial abrogation of collateral source rule does not include Social Security benefits).

A probable effect of Section 119 will be to reduce double expenditures for medical costs. The "ISO Closed Claims Survey" suggests that medical costs represent approximately 19.7 percent of product liability claims. "ISO Closed Claims Survey" at 57. Nevertheless, the cost savings generated by this Section will probably be modest. The ISO closed claims data, which were quite limited on this point, show that approximately 6.4 percent of claimants have been reimbursed by public collateral sources. *See* "ISO Closed Claims Survey" at 181. Collateral sources paid for 19.8 percent of the claims in those cases (this closely parallels the general percentage of medical benefits). Nonetheless, this Section should help reduce overall insurance costs. Liability insurers should take this matter into account when they formulate rates and premiums.

Section 119 also takes account of existing legislation that may authorize subrogation by public collateral sources. In order to reduce transaction costs and duplicative distribution costs, this Section prohibits such subrogation.

Finally, Section 119 does not alter existing law that prohibits the defendant from introducing into evidence the fact that the claimant has been indemnified by a collateral source. That alternative approach was rejected because it would leave the trier of fact in the role of balancing the delicate policy elements that surround proposals calling for abolition of the collateral source rule. This should be an issue of law for state legislatures or courts. Also, that approach would reduce the potential benefit of collateral source rule modifications in that it would increase transaction costs and lower predicatability and consistency in the allocation of collateral benefits. *See* "Task Force Report" at VII–74–75. *Cf.* Defense Research Institute, "Products Liability Position Paper" at 44–45 (1976) (advocating modification of evidentiary rules to allow trier of fact to consider all collateral benefits).

* * * * *

Code

Sec. 120. Punitive Damages

(A) Punitive damages may be awarded to the claimant if the claimant proves by clear and convincing evidence that the harm suffered was the result of the product seller's reckless disregard for the safety of product users, consumers, or others who might be harmed by the product.

(B) If the trier of fact determines that punitive damages should be awarded, the court shall determine the amount of those damages. In making this determination, the court shall consider:

(1) The likelihood at the relevant time that serious harm would arise from the product seller's misconduct;

(2) The degree of the product seller's awareness of that likelihood;

(3) The profitability of the misconduct to the product seller;

(4) The duration of the misconduct and any concealment of it by the product seller;

(5) The attitude and conduct of the product seller upon discovery of the misconduct and whether the conduct has been terminated;

(6) The financial condition of the product seller;

(7) The total effect of other punishment imposed or likely to be imposed upon the product seller as a result of the misconduct, including punitive damage awards to persons similarly situated to the claimant and the severity of criminal penalties to which the product seller has been or may be subjected; and

(8) Whether the harm suffered by the claimant was also the result of the claimant's own reckless disregard for personal safety.

* * * * *

Analysis

Sec. 120. Punitive Damages

Some product sellers and others have called for the abolition of punitive damages on the grounds that they serve no proper "tort law" purpose,[18] and at least one court has accepted these arguments in the area of product liability. *See* "Walbrun v. Berkel, Inc.," 433 F. Supp. 384–85 (E.D. Wis. 1976); "Roginsky v. Richardson-Merrell, Inc.," 378 F.2d 832 (2d Cir. 1967) (dictum).

Nevertheless, as Section 120 acknowledges, punitive damages serve an important function in deterring product sellers from reckless disregard for safety in the production, distribution, or sale of dangerous products. *See* "Toole v. Richardson-Merrell, Inc.," 251 Cal. App. 2d 689, 60 Cal. Rptr. 398 (1967); "Gillham v. Admiral Corp.," 523 F.2d 102 (6th Cir. 1975). At the same time, Section 120 recognizes and addresses punitive damages problems in the specific context of product liability.

While many product sellers have expressed great concern about the economic impact of punitive damages, the "ISO Closed Claims Survey" suggests that the number of cases in which such damages are imposed is insubstantial. "ISO Closed Claims Survey" at 183. Nevertheless, concern about punitive damages has caused some insurers to decline to provide insurance coverage for these damages. Also, a number of states and some insurers have declined to permit such coverage. They contend that a product seller should not be allowed to pass this cost on to an insurer. Transcending all of these concerns is the total lack of legal structure surrounding punitive damages. The approach taken in Section 120 is to provide such a structure, so as to reduce product sellers' reasonable concerns about punitive damages, while at the same time retaining the important deterrent function of punitive damages.

Subsection (A) addresses a basic argument against punitive damages—specifically that they apply a criminal law sanction to a civil law case, even though the defendant does not have the benefit of the constitutional protections that would be available under criminal law. Subsection (A) moves away from the ordinary "preponderance of evidence" test of civil cases and toward

[18] *See* "Proposed Uniform State Product Liability Act" Section 206 (National Product Liability Council) (undated); *see generally* Defense Research Institute, "The Case Against Punitive Damages" (monograph 1969) (marshalling arguments).

the criminal standard, but does not turn completely to a pure criminal standard of proof "beyond a reasonable doubt." Because the defendant is not subject to incarceration, and the "punishment" is more in the nature of a civil fine than a criminal sanction, the Act requires the claimant to prove by "clear and convincing" evidence that punitive damages are justified. *See* Subsections 102 (H) and (I) (definitions of "preponderance of evidence" and "clear and convincing evidence").

Subsection (A) also requires that the claimant prove that the product seller's conduct demonstrated reckless disregard for the safety of others. The phrase "reckless disregard"—the traditional barrier that the plaintiff must cross in order to obtain punitive damages—means a conscious indifference to the safety of persons who might be injured by the product. *See* Subsection 102(J) (definition of "reckless disregard"); *cf.* W. Prosser, "Torts" at 9–10 (4th ed. 1971). The "reckless disregard" standard is identified in statutory form to avoid any possible misinterpretation of this basic area of law. Thus, it should be clear that a product seller does *not* have to pay punitive damages under ordinary strict liability or negligence standards which fall short of reckless disregard.

Subsection (B) follows the current common law system in allowing the trier of fact to determine at its discretion whether punitive damages should be awarded. *See* Prosser, *supra* at 9. On the other hand, this Subsection draws upon a newly enacted Minnesota statute in having the court, rather than the jury, determine the amount of those damages. "Minn. Stat. Ann." Section 549.21 (Supp. 1978). This approach is in accord with the general pattern of criminal law where the jury determines "guilt or innocence" and the court imposes the sentence. This is particularly appropriate in product liability cases where, under current law, product sellers are potentially subject to repeated imposition of punitive damages for harm caused by a particular product.

Subsection (B) provides guidelines for the court in determining the amount of punitive damages. The eight factors are derived from "Minn. Stat. Ann." Section 549.20(3) (Supp. 1978). The drafters of that statute relied on a very thorough analysis of product liability punitive damages. *See* Owen, "Punitive Damages in Products Liability Litigation," 74 "Mich. L. Rev." 1257, 1299–319 (1976).

Factors (1) and (2) are self-evident. If the facts show that the product seller was actually aware of the specific hazard *and* its seriousness, *and* marketed it anyway, a higher award is in order.

Factor (3), profitability, recognizes that punitive damages may be used to attack directly the profit incentive that generated the misconduct.

Factor (4) is important regardless of the basic requirement that the product seller must have reckless disregard for the safety of others. If the product seller consciously concealed its activities, this fact argues for a higher award.

Factor (5) acknowledges that the product seller who was reckless in producing the product, but who acted quickly to remove the product from the market upon discovery of the hazard, should not be subject to as harsh a sanction as one who failed to act. Some have suggested that punitive damages should be awarded only where corporate management has either authorized, participated in, or ratified conduct that shows a conscious or reckless disregard for public safety. *See* "Task Force Report" at VII–79. Section 120 rejects that approach because it could foster legal disputes as to whether an individual stood "high enough" in the corporate structure to bear responsibility for punitive damages. Nevertheless, in circumstances where a non-management employee caused the harm and management acted quickly to mitigate that harm once it was discovered, a lower award is appropriate.

Factor (6) permits the court to consider the impact of the award on the product seller in light of its financial condition. This consideration has deep roots in common law. It is one that has been subject to criticism from product sellers and economists. Nevertheless, in light of the fact that the deterrence of wrongful conduct is the principal rationale for punitive damages, it is appropriate to consider the impact an award will have on a particular product seller.

Factor (7) is more important in product liability cases than in other liability cases because it addresses the problem of multiple exposure to punitive damages. This factor directs the court to consider both criminal and civil liability to which the product seller has been or may be subjected.

Factor (8) recognizes that the injury may also be attributable in part to the claimant's reckless disregard for personal safety. In such instances where the defendant can show such reckless disregard on the part of the claimant, punitive damages may be diminished proportionately according to the comparative responsibility according to the comparative responsibility of that claimant. The comparison, therefore, is between the reckless disregard on the part of the product seller and that of the claimant, and *not* between the reckless disregard of the product seller and mere negligence of the claimant. *See also* Section 111.

The Act indicates that the award of punitive damages goes to the claimant and not to the state. While the argument that "since the damages are non-compensatory, they should go to the state" has some merit, the approach was rejected because of constitutional problems and the fact that it might place a claimant's attorney in a potential conflict of interest situation by forcing the attorney to represent both the claimant and the state. *See* "Task Force Report" at VII–79.

When the trier of fact determines that punitive damages should be awarded, one option available to the court is to limit the award to a multiple of the compensatory damages as is done in antitrust actions. While this approach has appeal, it is not appropriate in the case of product liability because this area of the law addresses a multiplicity of different kinds of wrongful acts. Antitrust law, on the other hand, addresses one basic kind of wrongful act: an antitrust violation. Under this Section, the defendant's wrongful conduct could range from that which merely could cause damage to property to conduct which could result in the deaths of many people. Antitrust law violations involve economic injury only, and rarely, if ever, result in serious physical injury or death. Thus, the punitive damages in product liability actions do not lend themselves to quantification in the same manner as do such damages in antitrust cases.

* * * * *

Code

Sec. 121. Severance Clause

If any part of this Act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its effect to that part of this Act declared to be invalid.

* * * * *

Analysis

Sec. 121. Severance Clause

This Section makes clear that in the event any court of competent jurisdiction declares any part of this Act to be invalid, such action shall be confined to that part alone, and shall not affect the validity of the remainder of the Act. The source of this Section is "1976 N.Y. Laws," ch. 955 (12)

Exhibit

"J"

J Ayub Med Coll Abbottabad 2005;17(3)

SEXUAL DYSFUNCTION IN MALE PATIENTS TAKING ANTIPSYCHOTICS

Mohammad Younas Khawaja
Department of Psychiatry, Ayub Medical College, Abbottabad

Background: Antipsychotics drugs are known to cause sexual dysfunction and are said to be a major cause of non-compliance /poor compliance. There is no local data on the subject although clinical observations indicate that sexual dysfunction in patients on neuroleptics is relatively common. This study was carried out to ascertain the frequency of sexual dysfunction in patients taking antipsychotics medications as no study has been done locally on the subject. **Methods:** Sexual dysfunction was assessed in fifty patients receiving antipsychotic medication and fifty normal controls using Arizona Sexual experience scale (ASEX). **Results:** Erectile dysfunction (48%) and ejaculatory dysfunction (45%) are the two most prominent sexual dysfunction affecting patients taking antipsychotics and the difference from controls is statistically significant. **Conclusions:** Sexual dysfunction among male patients on antipsychotic medications is relatively common.

Key Words: Erectile dysfunction, ejaculatory dysfunction, orgasmic dysfunction, sexual dysfunction, Antipsychotics.

INTRODUCTION

Antipsychotic medications are thought to cause various degrees of sexual dysfunction.[1] Sexual dysfunction is thought to major cause of non-compliance and studies have shown an association between sexual dysfunction and antipsychotics. Schizophrenics taking neuroleptics have more sexual dysfunction compared to unmedicated patients.[2-4] The prevalence of Sexual dysfunction in groups treated with antipsychotics is 60% in men and 30-93 %in women.[5,6] No local data is available on the subject. So the study was done to assess the frequency of sexual dysfunction in the local hospital based population taking antipsychotic medications.

MATERIAL AND METHODS

The study started in November 2004 and was done at Ayub teaching hospital. Data was collected from November 2004 to January 2005. Inclusion criteria included patients giving informed consent, stabilized on antipsychotics, age range between 18-60 years and being married. Exclusion criteria included Diabetes mellitus, Hypertension, cardiovascular disease, gonadal injury, endocrine disorder/medication, substance abuse, inability to give informed consent or answer questions and use of medications other than antipsychotics. (antidepressants, anticonvulsants, lithium, and beta-blockers). Female patients were excluded because of cultural reasons. Fifty consecutive male patients attending psychiatric outpatients department and receiving neuroleptic medications were included in the study. Another fifty patients attending general male outpatients department of the same hospital for minor ailments acted as normal controls.

Patients sexual functioning was assessed using Arizona sexual experience scale (ASEX) for men developed by McGahuey et al.[7] Patients were interviewed by a trained interviewer who translated /explained questions to patients. Subjects were recorded to have sexual dysfunction as measured by a total score of 19 or higher on ASEX or any individual item score greater than 5 or any 3 individual item score equal to 4. Apart from sexual function the following information was also collected in more details.

Demographic information, history of mental illness and drug compliance were recorded. Statistical analysis was done. Standard error difference between two proportions was calculated. P-value was then obtained using normal distribution table.

RESULTS

The percentage of sexual dysfunction in patients and controls is shown in Table 1. The levels of libido reported by patients taking antipsychotics didn't differ significantly from normal controls. However, patients taking Antipsychotics reported more than twice as much erectile dysfunction (48%) than normal controls (22%). Similarly ejaculatory dysfunction was 3.2 times more common in subjects taking antipsychotics than normal controls. The difference in erectile and ejaculatory dysfunction between patients and controls were statistically significant. Orgasmic dysfunction (lack of enjoyment) was slightly less than twice as common in the patients group (14%) than normal controls (8%). The different types of antipsychotics medications taken by patients included depot clopenthixol, depot fluphenazine, haloperidol, trifluperazine, thioridazine and risperidone. The

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Email:myounaskhawaja@hotmail.com

doses of different medications used are given in Table 2. Majority of the patients 37 (74 %) had acute or chronic schizophrenia while 13 patients (26 %) were suffering from bipolar affective disorder with most recent episode being manic.

Table 1: Sexual Dysfunction in Patients and Normal Controls

Sexual dysfunction	Patients	Controls	P-value
Reduced Libido	8 %	6 %	N.S*
Erectile Dysfunction	48 %	22 %	P<.01**
Ejaculatory Dysfunction	46 %	14 %	P<.01**
Orgasmic Dysfunction	14 %	8 %	N.S*

*: Not Significant, **: Highly Significant

Table 2: Medications and dosage Causing Sexual Dysfunction

Drugs Used	Dosage
Depot Clopenthixol	200 mg
Fluphenazine Depot	25 mg
Haloperidol	10-20 mg
Trifluperazine	10-20 mg
Thioridazine	600mg
Risperidone	4-6 mg

The dosage for clopenthixol and fluphenazine was Given once every three weeks while for others daily dosage are mentioned.

DISCUSSION

Studies to assess sexual dysfunction in schizophrenia have used different methodologies: open interview[8] review of medical record[9] semi structured interview[6] self-rating questionnaire completed in the presence of interviewer[2] structured interview and questionnaire.[10] The best way of finding out whether antipsychotics medication has a negative effect on sexual function is to compare subjects before and after they start medication.[11] However, drug free patients are too unwell to answer intimate questions about sexual functioning. In this study as ASEX is in English, questions had to be translated and explained to the responders in local language. The advantage of this approach is that responders were able to understand any points they do not within the questionnaires. However the disadvantage of this method is responders don't have privacy, which they would have in case of questionnaires. This leads to embarrassment during interview; some interviewer's bias and responders may be less honest in answering some questions. However in the current circumstances this was the best possible option. The results are consistent with other studies. All previous studies on the subject[2,3,5,6] have reported higher level of sexual dysfunction in patients on neuroleptics medications. The most prominent problem was E.D. (48%). This percentage is similar toTeusch et al [6] (47 %) and more than 38 % reported by Gharidian et al.[5] About 80% of patients reported at least one sexual dysfunction. This is comparable with 82 % reported by Nithsdale schizophrenia survey.[12]

Only male patients were included in the study because an earlier pilot study showed reluctance of female patients to answer questions about sexual problems or give informed consent and lack of trained female interviewer.

Arizona Sexual Experience Scale (ASEX) is brief, contains questions about all aspects of sexual cycle that is, libido, erection, orgasmic, and ejaculatory functions. However, it does not address aspects of relationship between partners. Therefore only married patients were included in the study. Although questionnaires does not include questions about relationship, patients were asked about the level of relationship between spouses and patients with strained relationship with spouses were not included in the study.

CONCLUSIONS AND IMPLICATIONS

The study suggests that sexual dysfunctions in male patients on Antipsychotic medications are relatively common.

- The majority of patients on antipsychotic medications had at least one sexual dysfunction with erectile dysfunction being the most common.
- Sexual dysfunction should be routinely inquired from patients with schizophrenia and bipolar affective disorder receiving antipsychotics medications during follow up and dosage adjusted accordingly.

ACKNOWLEDGMENTS

I am grateful to Dr Saleem Wazir of department of community medicine, Ayub Medical College, Abbottabad for help in statistical calculations.

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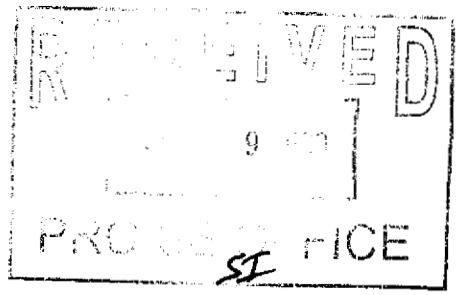
ORIGINAL



UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

JONATHAN ELLIOTT,

D.B.A. "EVOLVE TALENT AGENCY"

ON BEHALF OF 60+ SICILIANS

PLAINTIFF

09 5019

AMON, J.

v.

STATE OF NEW YORK

DEFENDANT

_____?

LEVY, M.J.

COMPLAINT

The doctrine of the separation of powers (*trias politica*) between government branches is the fundamental principle American Government utilizes to "control the abuses of government." Federalist #51, James Madison, *Independent Journal*, 1788.

> "In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another." Federalist #51, James Madison, *Independent Journal*, 1788.

JURISDICTION AND VENUE

"Crimes against humanity have existed in customary international law for over half a century and are also evidenced in prosecutions before some national courts. The most notable of these trials include those of Paul Touvier, Klaus Barbie, and Maurice Papon in France, and Imre Finta in Canada. But crimes against humanity are also deemed to be part of *jus cogens* – the highest standing in international legal norms. Thus, they constitute a non-derogable rule of international law. The implication of this standing is that they are subject to universal jurisdiction, meaning that all States can exercise their jurisdiction in prosecuting a perpetrator irrespective of where the crime was committed. It also means that all States have the duty to prosecute or extradite, that no person charged with that crime can claim "the political offense exception" to extradition, and that States have the duty to assist each other in securing evidence needed to prosecute. But of greater importance is the fact that no perpetrator can claim the "defense of obedience to superior orders" and that no statute of limitation contained in the laws of any State can apply. Lastly, no one is immune from prosecution for such crimes, even a head of State." M Cheriff Bassiouni, Crimes of War. Org, 7/25/2009.

STATEMENT OF THE FACTS

As a signator of the Rome Statute of the International Criminal Court, President Obama, the U.S.A. and it's independent States are in violation of Article 7(i) "Crimes Against Humanity"

See the term defined below:

(i) Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time."

A forced disappearance occurs when force is used (by, for example, agents of a State) to cause a person to vanish from public view, followed by a refusal to acknowledge the deprivation of liberty (and/or by concealment of the fate or whereabouts of the disappeared person, thereby placing the victim outside the protection of the law. See Exhibit "A" Vega letter.

The International Convention for the Protection of All Persons from Enforced Disappearance is an international human rights instrument of the United Nations and intended to prevent forced disappearance. The text was adopted by the United Nations General Assembly on 20 December 2006 and opened for signature on 6 February 2007. Controversially, the United States refused to sign, saying that it "did not meet our expectations" (US State Department, Sean McCormack, 2/6/2007).

Article 1 of the Convention further states that:

> "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance."

Plaintiff Jonathan Elliott has been detained and removed from a very public position as a talent agent for five years. The Sicilians have been detained over a year. The cause of action is that the State omitted key evidence in the case including the impending license renewal process towards the end of disestablishing Sicilian business in the State and that

Officials working in each branch co-ordinated through the departments without independent initiative; that a single individual operating on both sides of Church and State managed to co-ordinate this action and enforce the disappearance, violating the independence of the executive, legislative and judicial branches *vis a vis* interaction with the three.

The State of New York must assume liability in this instant case, failing to adhere to the basic tenets of the Convention, including, but not limited to: Ensure that enforced disappearance constitutes an offense under its criminal law; establish jurisdiction over the offense of enforced disappearance when the alleged offender is within its territory, even if they are not a citizen or resident; cooperate with the other states in ensuring that offenders are prosecuted or extradited, and to assist the victims of enforced disappearance or locate and return their remains; respect minimum legal standards around the deprivation of individual liberty, including the right for imprisonment to be challenged before the courts; establish a register of those currently imprisoned, and allow it to be inspected by relatives and counsel; ensure that victims of enforced disappearance or those directly affected by it have a right to obtain reparation and compensation.

According to the Rome Statute of the International Criminal Court, which came into force on July 1, 2002, when committed as part of a widespread or systematic attack directed at any civilian population, a "forced disappearance" qualifies as a crime against humanity, and thus is not subject to a statute of limitation.

CLAIM 1

UNLAWFUL RETALIATION

At issue is the pretext of the Court procedure to foreclose on a ruling of the original Evolve Talent Agency matter. The Court asserted a common interest of a majority over the rights of a minority and this is antithetical to constitutional precepts.

James Madison (1788) continues:

> "First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments…
>
> Second. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority will be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil; the one by creating a will in the community independent of the majority—that is, of the society itself; the other, by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable."

CLEAR omissions in the prosecution of the case. The parties are related in the targeting of licenses.

The foremost of these omissions consist in the fact that the prosecution did not outline the fact that many of these principles in business held licenses that were continually reviewed. The licensing procedure was a point of contention in the original Evolve Talent Agency compliant. For instance, Anthony Licata was denied registration to operate for Nighthawk Industries. Case history of the New York Waste Management Commissions also shows a procedural history of decisions against the Italian-American population of New York in contracts denied and permits as well. "Current contracts were made terminable at will, unless a carter received a waiver from the termination provision by the New York City Trade Waste Commission" Sanitation and Recycling Industry v. City of New York, 107 F.3d 985 (2d Cir. 1997) ,Id. at 994-95. As cited in Empire State Rest. & Tavern Assn v. New York State, , 360 F. Supp. 2d 454, 2005 U.S. Dist. LEXIS 4020, 21 O.S.H. Cas. (BNA) 1010 (N.D.N.Y 2005)

CLAIM 2

FAILURE TO REASONABLY ACCOMMODATE

A complainant has "a reasonable expectation to be heard" Larry B Hill Reviewed work(s): The State as Defendant: Governmental Accountability and the Redress of Individual Grievances by Leon Hurwitz, *The American Political Science Review*, Vo. 76, No. 1 (March 1982), pp. 166-67.

> "But a statute would not be constitutional which should proscribe a class or a party for opinion's sake, or which should select particular individuals form a class or locality, and subject them to peculiar rules, or impose upon them special obligations or burdens from which others in the same locality or class are exempt." A treatise on the constitutional limitations which rest upon the legislative, Thomas McIntyre Cooley, Victor Hugo Lane, 15 CALIFORNIA LAW REVIEW, Ed. 7, 1903, pp. 556-557

The Petitioner and the party he pleads for were entitled to "all Privileges and Immunities of Citizens in the several States" (U.S. Const. art. IV, § 2.). This right applies both to the privacy issues as well as the issues of unfair party selection. Discriminatory practices in trade as well as law are inherently evil. Also, 7th Amendment rights were ignored in the civil matter of Evolve Talent Agency. And 9th Amendment Rights were violated in the disparagement of a constructive constitutional case.

Furthermore, 14th Amendment rights are abridged when laws are enforced to prevent the application of privilege in this matter. As Petitioner has stated previously, this affected the right of due process in the matter. So the theory of the case and cause of action argument has two more specific parts:

1. The enforcement of law to abridge privilege
2. The right of due process.

Also Section 3, Treason and the levying of War against the United States must be considered as persecution.

> "Persecution is "the infliction of suffering or harm upon those who differ (in race, religion or political opinion) in a way regarded as offensive." Gormley, 364 F.3d at 1176 (internal quotation marks omitted). It is well established that physical violence is persecution under 8 U.S.C. § 1101(a)(42)(A). See, e.g., Guo v. Ashcroft, 361 F.3d 1194, 1197-98, 1202-03 (9th Cir. 2004)" Xun Li v. Holder , 559 F.3d 1096, 2009 U.S. App. LEXIS 6589 (9th Cir. 2009)

CLAIM 3

EMOTIONAL DISTRESS

"The elements of the tort of intentional infliction of emotional distress are: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) severe or extreme emotional distress suffered by the plaintiff; and (3) injuries to the plaintiff that were actually and proximately cause by the defendant's outrageous conduct. (*Christensen v. Superior Court* (1991) 54 Cal. 3d 868, 903, 820 P. 2d 181.)" As cited in *Baron v. Laemmle*, B158225, Cal. App. 2nd District Div 8, 2003.

To deny the right of rebuttal in judicial matters is outrageous and contrary to 14th amendment due process. This was the cause of extreme distress, loss of sleep and continues to be a source of anguish to this day.

Conclusion

The constitutional protection of the individual against the common majority is of vital and compelling interest to the Court. It was of primary concern to the founding fathers of the United States Government and necessary to uphold in precedent. It becomes a Federal question at the State level and a Federal Question when State officials pursue unreasonable methodologies in the course of Judicial proceedings. Winding up and dissolution procedures in licensing were excessive. The violations could have been cited as they occurred and were not cited by the State of New York. Constitutional protection becomes

relevant to the Court when the State fails to take enforced disappearance seriously and causes continual pain and suffering as a result. Blackstone considered it "a general and indisputable rule, that where there is a legal right, there is also a legal remedy, by suit or action at law, whenever the right is invaded." *Alden v. Maine*, 527 U.S. 706, 713, 119 S. Ct. 2240, 144 L. Ed. 2d 626 (1999).

PRAYER FOR RELIEF

Wherefore, Petitioner pray for the relief as follows:

The United States District Court Eastern District New York demand the State of New York pay the sum of $336,000,000 in accordance with 28 U.S.C. § 2201 and 28 U.S.C. § 2202 for conspiring to intentionally inflict emotional distress and conspiring to intentionally with the property rights, due process rights and civil rights of the plaintiff. Ten percent will be for the Evolve Talent Agency with the remainder divided among the 60+ Sicilians. The Petitioner prays for a Petition of Habeas Corpus along the lines of the one already initiated that was vanished.

Signed,

Jonathan Elliott
342 SE 1st Ave
Delray Beach, Fl 33444

PROOF OF SERVICE

I DECLARE UNDER PENALTY OF PERJURY THAT A CERTIFIED COPY OF THIS COMPLAINT WAS MAILED TO THE ATTORNEY GENERAL OF NEW YORK, ANDREW CUOMO, AT THE CAPITOL, ALBANY NEW YORK, 12224

Signed,

Jonathan Elliott

EXHIBIT A

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK
PRO SE OFFICE
U.S. COURTHOUSE
225 CADMAN PLAZA EAST
BROOKLYN, NEW YORK 11201

May 5, 2009

Jonathan Elliot
342 SE 1st Street
Delray Beach, FL 33444

Re: *USA v. Agate et al.* (08-CR-76) (JBW)

Dear Mr. Elliot:

The motion for return of property and statement of damages received by the Court on April 30, 2009 are being mailed back to you because you are not party to the case cited.

I hope the information I have provided you is helpful.

Sincerely,

Ralph Vega, Jr.,
Pro Se Writ Clerk

Enclosures

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

October 29, 2009

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Jonathan Elliot, D.B.A. "Evolve Talent Agency" on Behalf of 60+ Sicilians, 342 SE 1st Ave, Delray Beach, FL 33444

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(No Phone Number)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Pro Se: See Above

DEFENDANTS

State of New York

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE L[illegible] OLVED.

Attorneys (If Kn[illegible]

09 5019

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

AMON, J.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

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- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
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- ☐ 151 Medicare Act
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- ☐ 196 Franchise

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- ☐ 240 Torts to Land
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- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
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- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

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- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

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- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

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- ☐ 620 Other Food & Drug
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- ☐ 463 Habeas Corpus - Alien Detainee
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- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

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- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

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- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

IFP Mot

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):

Brief description of cause:
Civil Action Pursuant to "28 USC 2201 and 28 USC 2202."

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE RANDOM DOCKET NUMBER 08CR76(JBW)

(As an interested party.)

DATE
10/29/2009

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE CBA MAG. JUDGE RML

Nov 2009

ARBITRATION CERTIFICATION

I,_____, counsel for _____do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of $150,000 exclusive of interest and costs.
_____ Relief other than monetary damages is sought.

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks:

_____

Please refer to NY-E Division of Business Rule 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District of New York removed from a New York State court located in Nassau or Suffolk County: NO

2.) If you answered "no" above:

a.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? NO

b.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? YES

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes_____ **No**_____

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes_____**(If yes, please explain)** **No**_____

_____

_____

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.
(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

ATTORNEY BAR CODE:_____

E-MAIL Address: _____

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures(EFP)", and consent to the electronic service of all papers.

Signature: _____

Jonathan Elliott

5920 Comey Ave.

Los Angeles CA 90034

Plaintiff, pro se

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CV13 4891 MMM (JEMx)

JONATHAN ELLIOTT, Plaintiff v. MONSANTO COMPANY Defendant	Case No. **COMPLAINT**

Comes now the Plaintiff, Jonathan Elliott, appearing pro se, and for a complaint against the Defendant, above named, states, alleges, and avers as follows:

JURISDICTION

This Court has subject matter jurisdiction under 28 U.S.C. §1332(a)(1). Plaintiff is a resident of Los Angeles, California. Defendant is based in St. Louis, Missouri and has substantial ties with the forum State, including sales of seeds, herbicides and millions of dollars in political contributions to influence the legislation of California government.

STATEMENT OF CLAIM

The Defendant Monsanto Company has an overwhelming monopoly on the market for soybean, cotton and corn seeds that are particularly resistant to insect and herbicides. The United States market is in danger because the supply of these seeds is in the hands of one competitor and this is contrary to the free market forces of our capital markets, enriching a single source and making entry into the common stream of commerce impossible from the advent of technological advancements. Defendant Monsanto Company's actions to control the elements of food production are leading the United States to war against foreign nations so outraged by the Defendant's conduct that our entire country is imperiled. This complaint in no way seeks to limit the production of GMO seeds ("Genetically Modified Organisms") or limit the distribution, commercialization or sales.

CAUSES OF ACTION

1. Defendant Monsanto Company is in violation of 15 U.S.C. § 1. restraint of trade.

2. Defendant Monsanto Company is in violation of 15 U.S.C. § 2, monopoly.

3. Defendant Monsanto Company is in violation of § 7 of the Clayton Act, 15 U. S. C. § 18.

STATEMENT OF FACTS

On May 29, 1992 the FDA introduced its policy on Genetically Modified Organisms and stated:

> "Under this policy, foods, such as fruits, vegetables, grains, and their byproducts, derived from plant varieties developed by the new methods of genetic modification are regulated within the existing framework of the act, FDA's implementing regulations, and current practice, utilizing an approach identical in principle to that applied to foods developed by traditional plant breeding. The regulatory status of a food, irrespective of the method by which it is developed, is dependent upon objective characteristics of the food and the intended use of the food (or its components). The method by which food is produced or developed may in some cases help to understand the safety or nutritional characteristics of the finished food. However, the key factors in reviewing safety concerns should be the characteristics of the food product, rather than the fact that the new methods are used. "*Statement of Policy: Foods Derived From New Plant Varieties*,
> Vol. 57 No. 104 Friday, May 29, 1992 p 22984
> DEPARTMENT OF HEALTH AND HUMAN SERVICES
> Food and Drug Administration

Corn is the single largest agricultural product produced in the United States. According to the USDA, National Agricultural Statistics Service, Agricultural Prices: and USDA, World Agricultural Outlook Board, World Supply and Demand Estimates, the Weighted average of the U.S. season-average price based on monthly price received by farmers weighted by monthly marketings, in 2003/2004 was $2.42 and in 2012/2013 was $6.22, an increase of %257.

> "Farmers complain about Monsanto's prices, but they still buy the seeds. Ninety percent of the U.S. soybean crop and 80% of the corn crop and cotton crop are grown with seeds containing Monsanto's technology."

The Planet Versus Monsanto, by Robert Langreth and Matthew Herper, Forbes Magazine, January 18, 2010.

Defendant's overwhelming market share of soy, corn and cotton is a matter of indisputable material fact.

Plaintiff alleges that the Defendant, Monsanto Company has a market share of seeds and a licensing practice that "limits the reproduction" of commodities in violation of 15 U.S.C. § 1. See the Defendant's argument in the U.S. Supreme Court in *Bowman v. Monsanto Co*, 11-796, March 19, 2013. The Defendant's argued "Without the ability to limit reproduction of soybeans containing this patented trait, Monsanto could not have commercialized its invention and never would have produced what is, by now, the most popular agricultural technology in America."

The Defendant's argument is in clear violation of restraint of trade, as is the Defendant's contract with Bowman that he be prohibited from "saving seeds" of his resulting crop. The decision has fueled public outrage with the Defendant Monsanto Company and there have been news estimates that nearly 2 million people participated in the May 2013 protest against them.

In *Monsanto vs. Bowman* the adjudication of the patent helped enforce the monopolistic marketing of soybean and corn seeds in the United States. According to the USDA Economic Research Service, "Corn is the most widely produced feed grain in the United States, with most of the crop providing the main energy ingredient in livestock feed... Corn is also processed into a multitude of food and industrial products including starch, sweeteners, corn oil, beverage and industrial alcohol, and fuel ethanol." Source: http://www.ers.usda.gov/topics/crops/corn.aspx#.Ua1RymEqpIA (Last visit June 3, 2013).

So the cost of goods sold is negatively affected by price increases in a multiplicity of markets.

> "Seventy years ago, there were nearly seven million American farmers. Now there are about two million, even though the general U.S. population has doubled. Between 1987 and 1992, America lost an average of 32,500 farms per year, mostly family farmers. Of those small farmers still on the land,80% have farm income below the poverty line." *U.S. Farm Crisis*, by Manjula V. Guru and James E. Horne, The Kerr Center for Sustainable Agriculture, 2000, pg.3.

A cause of action in the field of Soybean production, the Defendants are also in violation of 15 U.S.C. § 2, monopoly of the corn, soybean and cotton seed markets. Defendant has genetically altered seeds to withstand the exposure to herbicides and dominates the market with extraordinarily large market shares, effectively controlling the supply chain of food. Glyphosate is a broad-spectrum systemic herbicide used to kill weeds, especially annual broadleaf weeds and grasses known to compete with commercial crops grown around the globe, it is also known as the Defendant's product called "Roundup."

The Defendant Monsanto Company has a patent on the "Roundup Ready" soybean seeds resistant to the "Roundup" herbicide that will expire in 2014. However, to preserve marketshare, the Defendant Monsanto Company has developed a new progeny of seeds called "Roundup Ready 2.0" which offers a greater yield and will further the preservation of the Defendant Monsanto Company monopoly of soybean seed business.

Defendant Monsanto argued in *Bowman:*

> "The very first Roundup Ready soybean seed was only made in 1996. And it now is grown by more than 90 percent of the 275,000 soybean farms in the United States." *Supreme Court Appears to Defend Patent on Soybean,* by Adam Liptak, NY Times Business Day, Online, February 19, 2013.

"A post-merger market share of 48.8% is sufficient to establish prima facie illegality under *United States v. Philadelphia National Bank*, 374 U.S. 321, 83 S.Ct. 1715, 10 L.Ed.2d 915 (1963), and its progeny." *United States v. Waste Management, Inc.*, 743 F.2d 976, 981 (2d Cir.1984).

"In *United States v. du Pont & Co.*, 351 U.S. 377, 391 , we defined monopoly power as "the power to control prices or exclude competition." The existence of such power ordinarily may be inferred from the predominant share of the market. *In American Tobacco Co. v. United States*, 328 U.S. 781, 797 , we said that "over two-thirds of the entire domestic field of cigarettes, and . . . over 80% of the field of comparable cigarettes" constituted "a substantial monopoly." In United States v. Aluminum Co. of America, 148 F.2d 416, 429, 90% of the market constituted monopoly power." *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966)

The Kremlin, so offended by Defendant Monsanto Company's control over the marketplace, kept U.S. Secretary of State John Kerry three hours before meeting with Russian leader Vladimir Putin. The Kremlin, concerned over the drastic loss of bees from pesticides and other toxins, coupled with Defendant Monsanto Company's genetic engineering of resistant strains of bees warned of a "bee apocalypse" that will "most certainly" lead to World War. *Russia Warns Obama: Global War Over "Bee Apocalypse" Coming Soon*, EU Times on May 10th, 2013. So Defendant Monsanto Company's extraordinary market share control has fueled the fire of a global conflict. This is another indisputable material fact. Defendant Monsanto

Company's global control of market share presents a sufficient controversy to warrant adjudication by the courts. Very substantial threats have given rise to the action.

As the grievance is, at this time a delicate and international one, the right of the individual to advocate for change should be considered paramount. Under section 16 of the Clayton Act, a private plaintiff is entitled to sue for injunctive relief "against threatened loss or damage" to remedy a violation of section 7. Cited in *Rc Bigelow Inc v. Unilever Nv J*, 867 F. 2d 102, 1988.

DEFENDANT'S MARKET POWER IN THE RELEVANT MARKET

"1998 Monsanto acquired DeKalb Genetics Corporation, which accounted for about 11% of U.S. corn seed sales in that year..." Source: http://www.monsanto.com/newsviews/pages/monsanto-submission-doj.aspx (Last visited June 4, 2013).

This did violate § 7 of the Clayton Act, 15 U. S. C. § 18. The Act, as amended, provides in pertinent part:

"No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital . . . of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly."

See *Brown Shoe Co. v. United States*, 370 U.S. 294, 343, 82 S.Ct. 1502, 1533-34, 8 L.Ed.2d 510 (1962) ("market share ... is one of the most important factors to be considered when determining the probable effects of the combination on ... competition in the relevant market"). As cited in *Rc Bigelow Inc v. Unilever Nv J*, 867 F. 2d 102, 1988.

In January, 1997 Defendant Monsanto Company agreed to buy Holden's Foundation Seeds Inc., a major corn seed producer, and two Holden seed distributors, for $1.02 billion. "Holden's, the country's last big independent producer of foundation seed, produces seed that is planted on about 35 percent of the acreage set aside for corn, analysts said." *Monsanto in a big seed deal whose price raises eyebrows.*, NY Times, Business Day, Online, By Kenneth N. Gilpin, January 07, 1997.

> "The offense of monopoly under 2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition [384 U.S. 563, 571] or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966).

"But the illegal restraint upon commerce among the States which we here find to exist consists in the possession acquired by the proprietary companies through the means and with the object we have stated of dominating commerce among the States ..."*United States v. St. Louis Terminal*, 224 U.S. 383, 32 S.Ct. 507, 56 L.Ed. 810 (1912).

"many biotech trait providers are vertically integrated with seed companies" Monsanto.com, *supra.*

"As we indicated in *Brown Shoe Co. v. United States*, 370 U. S., at 323-324: 'The primary vice of a vertical merger or other arrangement tying a customer to a supplier is that, by foreclosing the competitors of either party from a segment of the market otherwise open to them, the arrangement may act as a `clog on competition,' *Standard Oil Co. of California v. United States*, 337 U. S. 293, 314, which `deprive[s] . . . rivals of a fair opportunity to compete.' H. R. Rep. No. 1191, 571*571 81st Cong., 1st Sess. 8. Every extended vertical arrangement by

its very nature, for at least a time, denies to competitors of the supplier the opportunity to compete for part or all of the trade of the customer-party to the vertical arrangement." As cited in *Ford Motor Co. v. United States*, 405 U.S. 562 (1972)

Defendant Monsanto Company's purchase of competitive arrangements in the GMO seed industry has a substantial effect of destroying the competition. This tying-in arrangement means that companies fall under the same research and development channels of operation and substantially limits the possibilities of independent advances in the relevant market

> "The law directs itself not against conduct which is competitive, even severely so, but against conduct which unfairly tends to destroy competition itself. It does so not out of solicitude for private concerns, but out of concern for the public interest. See, e.g., *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977); *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104, 116 -117 (1986); *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962)" *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458 (1993).

> "There are four elements to a per se tying violation: (1) the tying and tied goods are two separate products; (2) the defendant has market power in the tying product market; (3) the defendant affords consumers no choice but to purchase the tied product from it; and (4) the tying arrangement forecloses a substantial volume of commerce. See *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 461-62 (1992); *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 12-18 (1984). " Cited in *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir.) (en banc), cert. denied, 122 S. Ct. 350 (2001).

In *Bowmen*, the Court responded by upholding the concept of patent infringement, rather than see the limitations on "seed saving" as restraint of trade. The Defendant Monsanto Company's international reach for profits has global significance.

"Even constitutionally protected property rights such as patents may not be used as levers for obtaining objectives proscribed by the antitrust laws." E. g., *Besser Mfg. Co. v. United States*, 343 U. S. 444, 448-449; *Morton Salt Co. v. Suppiger Co.*, 314 U. S. 488. As cited in *Ford Motor Co. v. United States*, 405 U.S. 562 (1972).

THE RELEVANT MARKET

The relevant market is the sales, distribution, production, commercialization and marketing of Genetically Manufactured Organisms ("GMO") also known as GMO seeds. These seeds are genetically altered to produce a protein that protects the plant from herbicides, pesticides and insecticides. The relevant market is international in breadth and scope, reaching China, Brazil, India, the United States and others. Consumers could not turn to Defendant Monsanto Company's brand of herbicide without also purchasing their compatible GMO seeds, also produced by the Defendant. So the vertical integration has created a condition where there is no substantial substitute.

Defendant Monsanto Company reported a gross profit of $7.04 billion for the trailing twelve months reported in their most recent quarter of February 28, 2013. Defendant Monsanto Company enjoyed a profit margin of 17.18%. Diluted earnings per share for the trailing twelve months was $4.69 with 533.8 million shares outstanding. Forward annual dividend rate was $1.50. The Plaintiff believes that traditional methods of dealing with Anti-Trust violations, particularly the notion of divestiture is a hard road to follow in this matter because the technology of herbicides and insecticides is expressly linked to the technology involved with providing genetically altered seeds, which have become a practical method of growing corn, cotton and soybeans. This having been said, the need to increase the intrinsic market value of the company is regarded in balance with international perceptions of

control/ownership of the corporate stock. The relative performance of the company will likely improve once the image of the company changes from corporate monolith to a co-operative global environment, improving the earning power of the many subsidiaries. The change will require greater accountability, expanding the scope of managers and a fundamental change in the allocation of capital resources. In the end, the change from management/executive based corporate control to farmer/producer participation will provide added value to operating results, revenues and retained earnings; it will also help ease the yearly expenditures of our local, national and international growers.

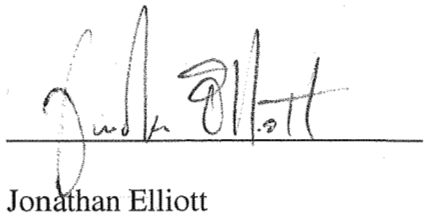
> "From 1982 to 1993, the prices paid by farmers for inputs increased by 23%, while the prices received by farmers rose by only a third of the cost increase. In other words, the situation got steadily worse. In 1997-1998, farmers spent about $2.64 per bushel to grow corn (according to government estimates), but they were only able to sell on average at $1.91 per bushel. In 1999, the price went down to $1.82 per bushel while costs of production continued to rise." *U.S. Farm Crisis*, by Manjula V. Guru and James E. Horne, The Kerr Center for Sustainable Agriculture, 2000, pg.4, citing *America's last family farms.* [Available at: http://www.turnpoint.org/lastfarms.txt].

PRAYER FOR RELIEF

Wherefore, Plaintiff seeks for Defendant Monsanto Company to be ordered to produce a Class "B" series of shares, floated in the amount of 3 million shares, with a $.01 par value, with voting rights, and that 70% (in accordance with approximate market share) of the actual dividend be paid out to the Class "B" shares. These shares would be offered free at the beginning of Fiscal year 2014 or the Fiscal year beginning 30 days after an Order on the matter, paid to the American farmers who regularly purchase Monsanto corn, soy beans and cotton seeds.

Plaintiff demands injunctive relief in the amount of $17,250,000 pursuant to 15 USC § 26. Defendant Monsanto Company will be responsible for publishing a "NOTICE OF DISTRIBUTION OF SHARES" and an "APPLICATION FOR SHARES" With each bag of soybean, cotton and corn seeds manufactured and sold in the United States of America.

Dated: July 8, 2013



Jonathan Elliott

Plaintiff, in pro per

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Margaret M. Morrow and the assigned discovery Magistrate Judge is John E. McDermott.

The case number on all documents filed with the Court should read as follows:

CV13- 4891 MMM (JEMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

---

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[X] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[ ] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I. (a) PLAINTIFFS (Check box if you are representing yourself ☒)

Jonathan Elliott

DEFENDANTS (Check box if you are representing yourself ☐)

Monsanto Company

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Jonathan Elliott
5920 Comey Ave.
Los Angeles, CA 90034
561-843-1402

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

David F. Snively
800 North Lindbergh Boulevard
St. Louis, MO 63167
Phone: 314-694-1000

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
- ☐ 3. Federal Question (U.S. Government Not a Party)
- ☐ 2. U.S. Government Defendant
- ☒ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☒ 1. Original Proceeding ☐ 2. Removed from State Court ☐ 3. Remanded from Appellate Court ☐ 4. Reinstated or Reopened ☐ 5. Transferred from Another District (Specify) ☐ 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☐ Yes ☒ No ☒ **MONEY DEMANDED IN COMPLAINT:** $ $17,000,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
15 U.S.C. §2 monopoly control of food production process leading to global tensions at home and abroad. Diversity jurisdiction consistent with 28 US.C §1332(a)(1)

VII. NATURE OF SUIT (Place an X in one box only).

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☒ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/Etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced & Corrupt Org.
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Info. Act
- ☐ 896 Arbitration
- ☐ 899 Admin. Procedures Act/Review of Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loan (Excl. Vet.)
- ☐ 153 Recovery of Overpayment of Vet. Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment

REAL PROPERTY CONT.
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS
PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Fed. Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury-Med Malpratice
- ☐ 365 Personal Injury-Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

TORTS
PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accomodations
- ☐ 445 American with Disabilities-Employment
- ☐ 446 American with Disabilities-Other
- ☐ 448 Education

PRISONER PETITIONS
Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus/Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Ret. Inc. Security Act

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405 (g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405 (g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: CV13 4891

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

☐ A. Arise from the same or closely related transactions, happenings, or events; or

☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or

☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Missouri

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
NOTE: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

***Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): _____ DATE: July 8, 2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))